U.S. (1987); Huttoe v. Finney, 437 U.S. 678 (1978); and **Loudermill v. Cleveland**, 470 U.S. 532 (1987), each of which allow the claims herein.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The due process clause of the Fourteenth Amendment to the United States Constitution provides that:

> "No State shall. . .deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

28 U.S.C. Section 1257(a) provides **inter alia**, that:

> "Final Judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari . . ."

Rule 501 Fed. R. Evid. provides, ***inter alia***, that:

> "[T]he privilege of a witness ... shall be governed by the principles of the common law as they may be interpreted by the courts of the United States in light of reason and experience."

Rule 5-1.2(f)(1) Fla Bar Trust Accounting Rules, "public policy" for prosecuting attorneys, provides. **inter alia**, that:

> "Members of the bar . . . may not assert any privilege personal to the lawyer . . ."

STATEMENT OF THE PROCEEDINGS

The Verified Complaint:

On or about February 23, 2004, the Petitioner sued the State of Florida under the United States Constitution, the Florida Constitution and Title 42 U.S. Code Section 1983. A33-A48, The record of the proceedings upon which the complaint began is filed in **Fox v. Florida**, U.S. Case No. 99-1887.

The State moved to dismiss the Verified Complaint, **inter alia**, upon the grounds that Rooker-Feldman precluded the complaint and the State was absolutely immune from suit, because of the temporary, interlocutory opinion of the Florida Supreme Court suspending the law license of the Petitioner, until the Petitioner complied with a subpoena. A64-A77. Harkness who was served with process as the Director of the Florida Bar, also moved to dismiss **inter alia**, upon the ground that the Rooker-Feldman doctrine precluded the complaint, A111-A115. The Petitioner responded that the Motions to Dismiss should be denied upon the ground that the State had waived immunity; and Rooker-Feldman did not apply to a temporary interlocutory, non-final decision of the Florida Supreme Court and Rooker-Feldman did not apply to bar the litigation of federal rights, for which there was no opportunity to litigate and in fact federal rights were not litigated in the state court. A78-A110; A116-A119.

The First Amended Verified Complaint:

Relative to this Petition, on **August 13, 2004** the Petitioner filed his First Amended Verified

Complaint. A120-A143. In the First Amended Verified Complaint, the Petitioner claimed that the State had waived immunity and he sued the State of Florida for injunctive relief and damages as respondeat superior; he sued Boggs, Sankel, Freshman, Karr, and Siegel for damages, injunctive relief and other relief; and he sued the Florida Supreme Court, the State and The Florida Bar for prospective relief. A115-A136.

District Court Dismissal upon Rooker-Feldman:

On **August 16, 2004** and unaware of the First Amended Verified Complaint, The District Court granted the motions to dismiss upon the sole ground that the Rooker-Feldman doctrine precluded the complaint and the assertion of any federal rights. A137-A139. The Petitioner filed a vigorous Motion for Rehearing pointing out that the First Amended Verified Complaint had been filed adding Defendants and claims as allowed under several U.S. Supreme Court decisions and that the Rooker-Feldman doctrine on its face did not apply to a temporary, interlocutory, non-final decision by the Florida Supreme Court in which there was no opportunity to litigate any federal issues. A140-A143. The Petitioner also moved for a default against the Florida Bar, which had never responded to the complaint. **Id.**

On October 14, 2004 the District Court reconsidered its dismissal in the face of the First Amended Verified Complaint and was greatly sympathetic to the Petitioner's circumstance. However, the District Court denied the Motion to

Proceed with the First Amended Verified Complaint and the Motion for Default and denied the Motion for Rehearing upon the sole ground that no complaint of any nature could be brought in federal court, because the Rooker-Feldman doctrine precluded any federal court jurisdiction of any claims whatsoever herein, because of the temporary, interlocutory, non-final decision of the Florida Supreme Court. A152-156.

The appeal to the U.S. 11th Circuit:

On appeal to the U.S. 11th Circuit Court of Appeal, the parties again argued as they had in the District Court. It was undisputed and the Eleventh Circuit recited in its opinion, that the Florida Supreme Court order was not final and temporary in nature. However the Defendants argued reported decisions of other courts, where Rooker-Feldman had been expanded to include non-final, interlocutory, temporary decisions of State courts. Therefore, on **June 17, 2005** the 11th Circuit expanded the Rooker-Feldman doctrine to include interlocutory, temporary, non-final decisions of **both** the Florida Bar Grievance Committee and the Supreme Court of Florida order. A4-A11. The 11th Circuit reasoned that although neither the Florida Supreme Court's opinion nor the Florida Bar's Grievance Committee were final, both decisions were final, "**for Rooker-Feldman purposes**." **Id.**, at A10.

A vigorous Motion for Rehearing and Rehearing En Banc was filed. A12-A26. In its reasoning, the 11th Circuit also erroneously wrote that the Petitioner's only remedy was to have filed a Petition for Certiorari from the Florida Supeme Court's interlocutory order, "**which [Fox] did not pursue.**" **Id.** at A11. This was

completely **erroneous** inasmuch as the Petitioner did engage in the futile effort of filing a Petition for Certiorari in this Court in **Fox v. Florida**, U.S. Case No. 99-1887. This **egregious** error in its consideration of this cause was pointed out to the 11th Circuit. **See**, A27-A28 (Additional Authority for Rehearing). However the Court ignored the error and denied the Motion for Rehearing and Rehearing En Banc. A29-A30.

ESSENTIAL FACTS AND CIRCUMSTANCES.

Your Petitioner's **Verified** Complaint and First Amended **Verified** Complaint recite the essential facts and circumstances herein. A33-A48; A120-A143; **see**, **also**, A166-A184 (April 15, 2005 Petitioner's Letter to Fla. Commission investigating Fla. Bar Lawyer Disciplinary Division misconduct). In **November of 1992**, as reflected in our contractual agreement, Linda Serbin, with whom I had been having an affair, came to me in tears complaining to me, a.) that her estranged husband, who was an alcoholic, had been raping and beating her daughter since she was nine (9) years old with both families' knowledge; b.) that she wanted a divorce from Jon Serbin and to save her daughter, who had tried suicide several times; c.) that the bank was about to obtain a final judgment of foreclosure on her $750,000 waterfront house of 21 years for the price of the $300,000 mortgage and she was without legal representation; d.) that she and her husband had both lied under oath to the

creditors' lawyers and to the Court in U.S. bankruptcy proceedings against her husband's business; and e.) that her daughter's personal injury case arising from a fall from a horse at an equestrian center, was being mishandled by counsel.

In the attached contract letter dated **November 23, 1992** I recited the foregoing and agreed to represent Linda Serbin in the house foreclosure and related matters for the flat sum of $25,000. A49-A57. I took her daughter's case to competent counsel, who filed and successfully prosecuted the case; and continued to represent Linda Serbin in several matters up to and including **June 5, 1998**. As noted in my letter I also was compelled to cease further intimate relations with Linda Serbin, because we were running the risk of my being a witness against her in her divorce from Jon Serbin.

Thereafter, I was able for seven (7) months to block vigorous successive attempts to sell her house on the Courthouse steps and I obtained a bona fida buyer for **$465,000** and closed the sale. Just prior to that, in **May of 1993** I had also forced the release of **$25,000** from the escrow fund of an unrelated defaulting buyer.

On **August 4, 1993**, I gave Linda Serbin a closing statement on the Serbin foreclosure litigation, in which I recited that the $25,000 escrow funds seized from the unrelated defaulting buyer was accepted as my fee and that on June 15, 1993 to assist her in moving I had given $5,000 of my fee back to Linda Serbin. Thereafter, without any further fees, I continued to represent Linda Serbin as

the plaintiff in the escrow deposit litigation against an unrelated defaulting buyer and on **June 5, 1998**, I obtained an award of **$27,000**. Thus Linda Serbin had recovered a total of **$517,000** ($465,000 + $25,000 + $27,000), from the sale of her house on the back of the undersigned and she received almost six (6) years of legal fees (November 1992 to June 1998) for the total sum of $25,000.

JON SERBIN'S COMPLAINT:

On September 10, 1996, more than three (3) years after the house foreclosure closing statement to Linda Serbin, Elena Evans of the Florida Bar forwarded the complaint of Jon Serbin. Jon Serbin complained that I had kept about $18,000 in my trust account since the sale of the Serbin house in June 1993 without authorization. Jon Serbin had never been my client. Jon Serbin's theory was apparently that I represented Linda Serbin since 1993 for free. I received a letter from Elena Evans asking me to respond to Jon Serbin's complaint, 'to see if this matter should even be referred to a grievance committee.' As reflected in my letters and two (2) Motions for a Protective Order, I repeatedly replied that Linda Serbin was my client and I would be happy to respond if she waived her attorney client privilege, which she repeatedly told me that she did not and she did not wish to make any complaint against me. If I had produced the enclosed written agreement to defend against the Jon Serbin complaint to show Jon Serbin's complaint was frivolous, I would have become a witness against Linda Serbin in her own divorce and a witness against her in state and federal criminal proceedings. I also

would have been disclosing her daughter's darkest fears and secrets.

1998 EX PARTE HEARING:

As noted, throughout the proceedings being handled by Elena Evans and the Florida Bar from September 1996 to February 29, 2000, I reiterated, a.) that I would be glad to cooperate and offered to produce all documents ***in camera***, but b.) that Linda Serbin had never made any complaint and did not wish to; c.) that Jon Serbin was not my client; and d.) that in order to defend against the complaint of Jon Serbin to show it was frivolous I would have to disclose the extreme confidences of Linda Serbin and her daughter, exposing her to ridicule and scorn in the community and prosecution in federal and state criminal proceedings, and making me a witness against my own client. Ms. Evans and the Florida Bar have never bothered to respond to my selfless efforts to protect my client's confidences.

Although, Ms. Evans never replied to my concern for my client's attorney client privilege, after the 11th Circuit Grievance Committee in Miami got my response and did **not** proceed, Ms. Evans transferred the case to the 17th Circuit. In **April 1997**, the 17th Circuit Grievance Committee issued a **punitive** subpoena for all client records. However, after the 17th Circuit Grievance Committee received the same response as I had given Ms. Evans as noted above, it **declined** to proceed and **closed** its file. The case was then transferred back to Ms. Evans.

In **September 1997**, Ms. Evans reissued the same **punitive** subpoena as the 17th Circuit

committee had issued asking for all client records. I again responded as noted above. A hearing was set by Evans for **January 20, 1998** at 5:30 o'clock p.m. upon "***the Complaint of Jon Serbin***." No other matter was noticed for hearing. I was required by the Notice to appear and defend. However, I had a previously scheduled federal arbitration trial in Seattle, Washington on **January 20, 1998** at 9:00 o'clock a.m. Under the standing 11th Circuit "***Federal State Administrative Conflict Order***" I made two written requests, by letter and motion respectively, asking for a delay of three (3) weeks to appear and defend against the taking of my license.

Ms. Evans and former Grievance Committee Chairman Lawrence Freshman, did not give a damn about the ***Federal State Administrative Conflict Order*** nor my inability to appear and defend against the taking of my license. In the hearing transcript on January 20th it was **undisputed** that I was in a federal arbitration trial in Seattle, Washington. However, the Committee proceeded with Evans and only three (3) of eleven (11) members present. Unknown to me, Linda Serbin was apparently unsworn on the telephone at this "hearing," but she denied ever being at the January 20, 1998 hearing. The Grievance Committee, which was only interested in the Serbin matter, without my appearance issued a recommendation that my license be **temporarily** suspended, until I complied with the 11th Circuit Grievance Committee subpoena.

Although, Linda Serbin had uniformly **refused** to make any complaint; repeatedly stated that she did

not want to make any complaint; and did not want me to violate her attorney client confidences, in a reckless, **ex parte** and illicit manner; **without my knowledge or permission**; and without explaining her rights to her, for nineteen (19) months Evans sent investigators and harassed and badgered Linda Serbin, to make a complaint against me. Finally, on **June 6, 1998** (the day after I concluded representing her and five (5) months after the foregoing Grievance Committee hearing), Linda signed a one line statement adopting Jon Serbin's complaint.

NO MEANINGFUL REVIEW.

The Florida Bar is fond of saying, The Florida Bar is,"an arm of the Florida Supreme Court." E.g., **Mueller v. The Florida Bar, 390 So.2d 449 (Fla.4th DCA 1980).** As a consequence, there is no meaningful review by the Florida Supreme Court of the conduct of the Florida Bar in attorney discipline matters. Indeed, under Rule 5-1.2(f)(1) Rules Regulating the Florida Bar, their position is that lawyers have no rights. Therefore, in the case at bar, instead of reviewing the complaints of the Petitioner regarding Evans conduct and the ex parte Grievance Committee proceedings, the Florida Supreme Court referred this cause to an administrative referee, Paul Siegel. A Verified Motion to Disqualify Siegel was filed detailing an, intense, bitter history of rivalry between Paul Siegel and the Petitioner and misconduct by the Florida Bar in its routine ex parte contact with Siegel. A58-A63. Siegel was very familiar with his conflict of interest and lack of

impartiality, but denied the motion to disqualify him and the Florida Supreme Court did not review it.

Before the Referee, Siegel, the Petitioner presented prima facia "good cause" for his refusal to comply with the Grievance Committee subpoena: the misconduct of Ms. Evans in recklessly ex parte harassment of his client and her disregard for the attorney client privilege; and the failing to consider the motions for protective order relating to attorney client privilege. However, these complaints fell upon deaf ears. Siegel conducted no review of the grievance committee matter and conducted no review of the misconduct of Evans. Therefore, because of the June 6, 1998, one liner signed by Linda adopting Jon Serbins' 1996 complaint, an effort was made by the Petitioner and the Florida Bar's new counsel, Wenzel, to settle this matter. However, the settlement of this matter recited in the record, was rejected by Wenzel's supervisor, Arlene Sankel, who later testified she was Elena Evans' pal. Therefore, after only one (1) brief hearing, Referee Siegel issued a recommendation adopting the Grievance Committee recommendation of a temporary suspension until the Petitioner complied with the 11th Circuit Grievance Committee subpoena.

On **November 24, 1999** without any review of any matter herein and relying entirely upon Referee Siegel's recommendation, the Florida Supreme Court issued its form order, which is prepared by the Florida Bar, affirming the recommendation of Referee Siegel and ordering that the Petitioner's

license should be **temporarily** suspended until the Petitioner complies with the 11th Circuit subpoena. The Florida Bar's form order also provides that the Petitioner (like all lawyers, but unlike all ax murderers or other citizens), is not entitled to the benefit of any of the appellate rules regarding rehearing nor delaying the effective date of the suspension order, in the event the Court has made a mistake. A31-A32. The order further recites that the Florida Bar may file a Notice of Compliance and in any dispute the Referee (Siegel), shall decide if the Petitioner has complied. A32.

On **October 2, 2000**, this Court denied certiorari without comment. **Fox v. Florida**, U.S. Case No. 99-1887. This Court's denial of certiorari was predicated upon the fact that the Florida Supreme Court's order is not final and an interlocutory temporary suspension. **See, e.g., United States v. Ryan**, 402 U.S. 530 (1971)(order enforcing a subpoena is not appealable): **Republic Naural Gas v. Oklahoma**, 334 U.S. 62 (1948)(U.S. Court has no jurisdiction to review non-final state court judgments or decrees); **Market Street Railway v. Railroad Commission of California**, 324 U.S. 548 (1944)(for review by U.S. Supreme Court a state court decision, "must also be final as an effective determination of the litigation and not of merely interlocutory or intermediate steps therein").

SUBSEQUENT GRIEVANCE COMMITTEE FINDING OF NO PROBABLE CAUSE.

Subsequent to the January 20, 1998 Grievance Committee hearing, Evans left the Florida Bar. On February 29, 2000, the Florida Bar through new counsel, Gregg Wenzel, scheduled a hearing before the **same** 11th Circuit Grievance Committee upon the **same** complaint of Jon Serbin as adopted by the one line statement of Linda Serbin. At the hearing, Linda appeared for the first time, and for the first time the undersigned was allowed to appear and to defend against the taking of his license. For the first time, the undersigned was allowed to produce the November 23, 1992 agreement with Linda Serbin. It was demonstrated to the Grievance Committee that Jon Serbin's complaint was **frivolous**. All Serbin records were produced to the satisfaction of the Grievance Committee. Therefore, on March 14, 2000, the Grievance Committee issued its **unanimous** finding of no probable cause, in a letter to the Serbins reciting, ***inter alia***:

> "You are advised that [the Complaint against Calvin D. Fox] has been investigated and considered by this committee. It is our decision that there is insufficient evidence to support finding probable cause to believe that a violation of professional ethics has occurred which warrants the imposition of discipline because: there is insufficient evidence to support your allegation that [Calvin D. Fox] improperly disbursed funds from his trust account."
> A42, para. 23; A125-A126, para. 41.

THE FLORIDA BAR IGNORES GRIEVANCE COMMITTEE AND COMPLAINTS.

As noted above by **Mueller v. The Florida Bar**, **supra**, there is no separation between the Florida Supreme Court and The Florida Bar. Therefore The Florida Bar acts with impunity, because nobody is actually supervising anything it does and there is no meaningful review. In the present cause, the Petitioner and the President of the Florida Bar repeatedly communicated with The Florida Bar to remedy the egregious errors herein. **E.g.**, A166-A184 (Petitioner's Letter to Commission).

On **July 20, 1998**, during the proceedings before the Referee, the Petitioner informed Tony Boggs, who is the Executive Director of Disciplinary Division the Florida Bar of the circumstances herein with a copy of a letter written to Bar Counsel, Gregg Wenzel. Mr. Boggs did not respond. A132; A166-A167; **see**, "**Florida Bar [Commission] Investigates Discpline for Lawyers**," *The Palm Beach Post*, p.1A (March 5, 2004).

On **January 16, 2001** the Petitioner again wrote of these circumstances to Florida Bar President-Elect, Todd Aronovitz. **Id.** On or about **June 5, 2001** Mr. Aronovitz personally met on behalf of the Petitioner with Tony Boggs in Bogg's Tallahassee office and requested that these circumstances be looked into. Mr. Boggs said he would do so, but **never** responded. **Id**.

On **December 4, 2001**, the Petitioner again wrote Mr. Boggs of these circumstances in detail and forwarded a copy to Florida Bar President Todd Aronovitz. In early 2002, Mr. Boggs wrote saying he would look into it, but has **never** responded. **Id**.

On **June 5, 2003** the Petitioner wrote to President Aronovitz and the Board of Governors to review this matter. On **June 11, 2003** President Aronovitz under a false impression that this matter was still pending in the U.S. Supreme Court, sent the matter back to Tony Boggs for a response. Mr. Boggs has **never** responded. **Id**.

Finally, on **April 28, 2004** in response to the Petitioner's complaint on April 15, 2004 to the Florida **Commission** investigating misconduct by the Florida Bar Lawyer Disciplinary Division, Boggs wrote that he thought that somebody else was responding and the Petitioner should file a petition with the Florida Supreme Court in the pending matter Florida Bar v. Fox, Fla. S.Ct. Case 92-484. **See**, A132, para. 46 (Amended Verified Complaint).

REASONS TO GRANT THE WRIT

The fundamental **narrow** doctrinal basis for the Rooker-Feldman doctrine is that jurisdiction to review a **final** decision of a state's highest court to which review may be taken, is **only** by a petition to the United States Supreme Court. 28 U.S.C. 1257(a); **District of Columbia v. Feldman**, 460

U.S. 462, at 486; **accord**, **Exxon Mobil v. Saudi Basic Industries**, ___ U.S.___, 125 S.Ct. 1517, 161 L.Ed.2d 454 (2005). The Florida Supreme Court opinion herein is a non-final, temporary, interlocutory order, which does not allow for jurisdiction for review in this Court. A31-A32. The fundamental doctrinal basis of the Rooker-Feldman doctrine does **not** exist in this case. Instead, the 11th Circuit has created an expansion of the Rooker-Feldman doctrine to affirm the District Court dismissal under Rooker-Feldman for lack of jurisdiction, which, relied upon an erroneous West Law electronic opinion of another Florida District Court and the opinion in **Leaf v. Wisconsin**, 979 F.2d 589 (7th Cir. 1992).

Furthermore, in **Exxon Mobil v. Saudi Basic Industries**, three (3) months prior to the 11th Circuit opinion in this case, the Court unanimously reversed the Third Circuit upon the same expansive reading of the Rooker-Feldman doctrine as precluding federal court jurisdiction, where both a state case and federal proceeding were underway at the same time. The claim of lack of jurisdiction in the present case is **identical** to that disapproved by this Court in **Exxon Mobil v. Saudi Basic Industries**. There is both a federal and a state case underway in the present circumstance. **See**, A114 (Harkness Motion). However, the 11th Circuit, the District Court and many other Circuit and District Courts continue to expanded the Rooker-Feldman doctrine to include temporary, interlocutory, non-final orders

of state court, which are not reviewable by the U.S. Supreme Court. Such a holding in the Eleventh Circuit, which is a leading, active Court, is an anathema to the narrow, limited basis intended by Rooker-Feldman and again confirmed by **Exxon Mobil v. Saudi Basic Industries, supra**.

This Court should review this matter, inasmuch as like the case at bar, the federal courts at all levels in opinions reported in the West Law electronic publishing system continue to log a large volume of erroneous cases citing each other, which expand and misapply the Rooker-Feldman doctrine beyond its narrow reach. Despite **Exxon Mobil v. Saudi Basic Industries**, the federal courts continue to be in complete disarray as to the doctrinal basis of Rooker-Feldman, which only this Court can remedy. **See, e.g.**, "**Petition for Writ of Certiorari**" cases collected at pp.8-17 in **Exxon Mobil v. Saudi Basic Industries, supra**.; Rowe, T., "**The Rooker-Feldman Doctrine: Worth Only the Power to Blow It Up**?" 74 Notre Dame L.Rev. 1081 (1999); Bandes, S., "**The Rooker-Feldman Doctrine, Evaluating Its Jurisdictional Status**," 74 Notre Dame L.Rev. 1175 (1999).

Furthermore, as reflected in this Court's frustration with the Third Circuit in **Exxon Mobil v. Saudi Basic Industries**, the invention of the Rooker-Feldman jurisdictional hurdle has confused and obfuscated the proper consideration of well-settled doctrines of preclusion, collateral estoppel,

abstention, comity and equitable restraint. **See**, 18 Charles Alan Wright, Arthur Miller & Edward Cooper, **Federal Practice and Procedure**, Section 4469.1 at 657-658 (Supp. 2001). In the present case, the 11th Circuit and the U.S. District Court in their confusion and misapplication of Rooker-Feldman have expanded the doctrine to **exclude** even specific federal claims in the present cause under **Verizon Maryland v. Public Service of Maryland**, 535 U.S.635, 643, n2 (2002); **Supreme Court of Virginia v. Virginia Consumers Union**, 446 U.S. 719 (1980); and **Alden v. Maine**, 527 U.S. 706 (1999). This Court should therefore also accept this cause to review the continued viability of the Rooker-Feldman doctrine.

LAWYERS ARE CITIZENS TOO.

As keepers of the faith, it is, indeed, ironic that lawyers are not entitled to any of the faith. This Court has never addressed whether lawyers, like ax murders and other citizens, are entitled due process and equal protection. **See**, Brewer, W., "**Due Process in Lawyer Disciplinary Cases: From the Cradle to the Grave**," 42 South Carolina Rev. 925 (1991). Meanwhile the state and federal courts are all over the map, with wildly varying opinions as to whether lawyers are entitled to any due process or equal protection. **Id.** Since we all began as lawyers, putting on one pant or pantyhose leg at a time, this is an important opportunity for this Court to address the rights of a vast and familiar population of citizens affected by a crazy quilt of rules and

byzantine practices, which vary without reason or rational basis from court to court. **Id.** Contrary to the purpose of lawyer discipline, the undersigned has been subjected to the reckless, illicit, unsupervised taking of his right to work, without fundamental due process nor equal protection and The Florida Bar doesn't care if he is ever able to maintain a livelihood again. Contrary to the unbridled misconduct of Florida herein, the author explains:

> "The underlying goal of disciplinary proceedings is to protect the public from unfit lawyers and maintain the integrity of the entire legal system. Lawyers are not subject to disciplinary proceedings in order to be punished. Their licenses to practice cannot be withdrawn capriciously. Thus, they are entitled to some measure of procedural due process." **Id.**, at 941.

The Petitioner was admitted to practice on May 22, 1975 and has been an honorable and productive member of his profession and community. **See**, A159-A165. When called upon, the Petitioner has faithfully prosecuted the rights of the people of Florida in more than 800 cases on appeal and before this Court. **See, e.g., Strickland v. Washington**, 466 U.S. 668 (1985)(standard for ineffective counsel);**Rider v. Florida**, 470 U.S.1075(1985)(common law immunity for spousal rape); **Florida v. Rodriguez**, 469 U.S. 1(1984)(second appearance for same case on

articulable suspicion); **Florida v. Zafra**, 463 U.S. 1202(1983)(searches of boats); **Florida v. Rodriguez**, 461 U.S. 940 (1983) (rehearing granted; cert. granted, reversed); **Florida v. Royer**, 460 U.S. 491(1983)(drug courier profile); and **Chandler v. Florida**, 449 U.S. 560 (1981)(cameras in the courtroom). Now, the Petitioner seeks to uphold his rights and those of his brothers and sisters in the bar, before this Court in the most important case of his life.

Relative to this Petition, this Court has long recognized the severity of capriciously depriving a person of the means of livelihood as in the case at bar. **Cleveland v. Loudermill**, 470 U.S. 532, at 543 (1985); **Fusari v. Steinberg**, 419 U.S. 379, 389 (1975); **Bell v. Burson**, 402 U.S. 535, 539 (1971); **Goldberg v. Kelly**, 397 U.S. 254 (1970); **Sniadach v. Family Finance**, 395 U.S. 337, 340 (1969). In this case, the Petitioner has sacrificed his career, his family **and** his health in order to protect against the State's unlawful practices and reckless disregard for the attorney/client privilege and denial of **fundamental due process**.

FUNDAMENTAL DUE PROCESS.

That the right to due process is fundamental to our system of justice and the Bill of Rights cannot be gainsaid. **E.g.**, **Baldwin v. Hale**, 68 U.S. (1 Wall.) 223, at 233, 17 L.Ed. 531 (1864); **Hagar v. Reclamation District**,111U.S.701,708 (1884).

Consistent with federal law, Florida purports to create a property right in a professional license, which may not be taken without due process under the state and federal constitutions. **See**, **Delk, D.D.S, v. Department of Professional Regulation**, 595 So.2d 966, at 967 (Fla. 5th DCA 1992); **Woods v. Department of Transportation**, 325 So.2d 25, at 26 (Fla. 4th DCA 1976). The prescribed standard of due process in administrative proceedings against a professional license in Florida is identical with the federal standard. **Delk,D.D.S. v. Department of Professional Regulation**, 595 So.2d 966, at 967 (Fla. 5th DCA 1992). Following this basic tenet, the due process standard for notice is identical to the federal constitutional standard. **See**, **Woods v. Department of Transportation** 325 So.2d 25, at 26 (Fla. 4th DCA 1976), **citing**, **Goldberg v. Kelly**, 397 U.S. 254 (1970).

Notwithstanding these standards, under Florida's ***public interest*** policy for prosecution of attorneys, when a prosecutor undertakes the prosecution of an attorney the foregoing rights and the rights of his or her client are forfeited. For example, under Florida Bar Rule 5-1.2(f)(1) Attorneys are prohibited from raising ***any applicable privilege personal to the lawyer*** as a defense to the reckless or unlawful conduct of a prosecutor. Similarly, under Florida's ***public interest*** policy, in the prosecution of an attorney there is no concern for the attorney/client relationship, nor concern for the protection of the

attorney/client privilege. Thus, as in the case at bar, the attorney's client becomes a target for ***ex parte*** interrogation without notice, ethical considerations, nor regard for the Fifth Amendment or attorney/client rights of the client. In no other place in the law does such prosecutorial misconduct regularly occur and go unsanctioned. Under Florida's ***public interest*** policy, on orders of temporary suspension of attorneys, the Florida Supreme Court has allowed prosecutors a rubber stamp in an unsigned form order for **immediate** suspension and thus, the attorney has less rights than any other citizen/litigant; and no review is permitted in this Court under 28 U.S.C. 1257(a).

There was obviously no fundamental due process in the present case if this cause is measured by any standards, which are applicable to other citizens. The proceedings below were predicated upon the ***ex parte*** hearing on **January 20, 1998**, which was not supposed to be ***ex parte***. It was essential to fundamental due process, that the attorney/client protection afforded LINDA SERBIN be waived in order to allow the PETITIONER ethically and legally to present his defense to the Complaint of Jon Serbin, and ***good cause***, which, in turn, would have completely exonerated the PETITIONER as reflected in the **uninanimous** decision on **February 29, 2000** by the same IIth Circuit Grievance Committee. **See**, A189-A190 (no probable cause finding).

Sub judice, the undersigned was also forced by the State's own Rules to be in attendance at a federal

arbitration trial in Seattle, Washington, which was the first to commence of the proceedings in conflict in the present case. **See**, 11th Circuit State-Federal Conflict Order; 11th Cir. Judicial Circuit Administrative Order 93-64. He was unable to defend against the taking of his livelihood at the hearing, where the State required him to appear and defend his license.

Under federal law, the taking of the your Petitioner's means of livelihood without fundamental due process was **manifestly unlawful**. **See**, **Cleveland v. Loudermill**, 470 U.S. 532(1987). In **Loudermill**, where the Petitioners had lost their livelihood without being able to defend at a hearing this Court explained that the rights infringed upon were based upon minimum federal due process rights. 105 S.Ct. at 1492. This Court in **Loudermill** further explained that the right to due process is guaranteed by the constitution and not by the **process** for the deprivation of life, liberty or property rights. 105 S.Ct. at 1493. In affirming the requirement of a hearing ordered by the courts below, the **Loudermill** court explained:

> "An essential principal of due process is that a deprivation of life, liberty or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. We have described the root requirement of the Due Process Clause as being that an individual be given

> an opportunity for a hearing before
> he is deprived of any significant
> property interest." [Citations omitted].

The Court in **Loudermill** therefore held that the right to work, like the license of the undersigned in the case at bar, once conferred is a vested property right, which, may not be taken without a showing of misconduct; a meaningful opportunity to a hearing; and in the absence of these elements, the taking of the right is a denial of **fundamental due process.** See, Friendly, "***Some Kind of Hearing***," U.Pa.L.Rev. 1267, 1281 (1975).

The wrongness of the 1998 **ex parte** Grievance Committee proceeding is reflected by the result on February 29, 2000, when the Petitioner was allowed to defend against the taking of his license and the Jon Serbin complaint was revealed as frivolous. Under **Loudermill** and the foregoing authority, this Court should accept jurisdiction herein, where the STATE by requiring a hearing, at which the Petitioner had to defend his license and right to a livelihood, which he could not attend, denied the Petitioner a meaningful right to be heard and therefore **manifestly** denied the Petitioner his right to **fundamental due process**.

II. ATTORNEY/CLIENT CONFIDENTIALITY:

The broader issue for this Court's consideration is Florida's ***public interest*** policy and practice of reckless disregard by STATE prosecutors of the attorney/client privilege, simply because the

prosecutors are going after an attorney. **Compare, e.g., Swidler & Berlin v. United States**, 524 U.S.399 (1998). In **Swidler & Berlin**, the Petitioners had, as in the case at bar, sought to quash grand jury subpoenas seeking the notes of a attorney/client conference of an attorney, who was deceased. In reversing the Court of Appeals order for disclosure of said notes, this Court explained the sanctity of the attorney/client privilege. **See, also, Upjohn v. United States**, 449 U.S. 383, 389(1981). This Court in **Swidler & Berlin** concluded that the sanctitiy of the attorney/client privilege extends beyond the grave.

In Florida, other than in prosecutions of attorneys herein, the privilege applies to all communications whether the attorney is hired or not, **Kier v. State**, 152 Fla. 389, 394, 11 So.2d 886, 888 (1943); the privilege may be waived **only** by the client, **Schetter v. Schetter**, 239 So.2d 51, 52 (Fla. 4th DCA 1970); a lawyer may raise the claim of privilege to protect his client, **Seaboard Air Line Ry v. Parker**, 65 Fla. 543, 62 So. 589 (1913); once raised, the burden of showing that the privilege does **not** apply is **upon the party seeking disclosure**, **Haskell Company v. Georgia Pacific Company**, 684 So.2d 297 (Fla. 5th DCA 1996); and the court should conduct an ***in camera*** hearing to protect against violations of the privilege, **Del Carmen Calzon v. Capital Bank**, 689 So.2d 279, 281 (Fla. 3d DCA 1995). Finally, where an attorney has been **accused by his client of wrongful conduct**, the attorney may then defend against such accusation without an express waiver of the privilege.

Wilson v. Wainwright, 248 So.2d 249 (Fla. 1st DCA 1971).

Notwithstanding the foregoing substantive law and this Court's views in **Swidler & Berlin**, under Florida's ***public interest*** policy in prosecutions of attorneys as in the case at bar, the STATE recklessly disregards the foregoing rules and instead chooses to bully and coerce attorneys into saving themselves and abandoning the sanctity of their client's confidences. The error in the STATE's policy and practice, was amply demonstrated in the case at bar, on **February 29, 2000**, when your Petitioner was for the first time relieved of the attorney/client privilege and allowed to defend against the taking of his livelihood. It was wholly apparent to the Grievance Committee that your Petitioner could **not** have disclosed LINDA SERBIN's attorney/client confidences. Without a waiver by LINDA SERBIN of her confidences, your Petitioner would have unlawfully and unethically exposed his client to ridicule and scorn in her community, making your Petitioner a witness against her in her own divorce and in state and federal criminal and civil proceedings. **See**, A49-A57 (contract with Serbin).

In **In Search of Atticus Finch** (2d Ed. 1997), at p. 131, the author laments that the profession has been greatly diminished by self interest and the failure to uphold the most noble standards of our profession, where he describes the missing qualities as:

> [t]he lack of a pervasive sense of mission by individual lawyers, the absence of a sense of rightness and righteousness that transcends self-interest and commercialism, the loss of a sense of calling, an idealism as in a vocation, that gives all of our labor its dignity.

It is that *sense of calling*; *idealism*; *pervasive sense of mission*; and *sense of rightness*, which transcended the self-interest of your Petitioner herein and to cause your Petitioner to seek to preserve and to protect that greatest traditions of our profession, the attorney/client privilege. **See, also**, Florida Ethical Opinion 92-5 (recommending that Florida attorneys **resist** administrative subpoenas to protect the confidences of Florida attorneys' clients). It has not been possible to bear this burden without the belief that this Court would uphold the exercise of that noble tradition.

III. IMPORTANCE OF CASE AND EQUAL PROTECTION

This Court should also accept this case, **first**, because the prosecutorial misconduct herein broadly affects attorneys and their clients appearing in state and federal systems. The conduct described herein is widespread because of misguided zeal to protect the ***public interest*** and this error spills over into all areas in that the STATE's prosecutors work refer

information to each other.

Secondly, this Court should also accept this case, because the error herein recurs and yet evades review, because of the very nature of the illegality imposed. Thus, if the STATE succeeds in coercing an attorney to give up his clients' confidences in the attorney's own self-interest, nobody in the legal system will present it for review by this Court. If the STATE does not succeed, the attorney without a livelihood and no experience in this Court has neither the means, nor the ability to present this matter for review.

Third, this Court should also accept this case, because of official practices and policies, which void the attorney/client privilege; and allow for the denial of fundamental rights, because of the status of your Petitioner as an attorney. **See** Rule 5-1.2(f)(1). In no other area of the law is the trampling of fundamental rights and the attorney/client privilege allowed.

Fourth, this Court should also accept this case, because there is no other Court available to remedy the chronic ill herein. Under Florida's ***public interest*** policy and practice; Florida Rule 5-1.2(f); and the lack of a bright line of separation between the Florida Supreme Court and its review of the Florida Bar Disciplinary Division. As demonstrated in the case at bar, in the prosecution of attorneys, the Florida Supreme Court, greatly overlooks the trampling of fundamental rights and the prosecutor's reckless disregard of attorney/client confidences. While it may help reduce the Court's case load by forcing quick compliance, the Court's form orders limiting the stay protections afforded all litigants under Florida Rules

9.300(b) and 9,340(b) is emblematic of Florida's illicit practice of limiting the rights of attorneys and their clients in prosecutions of attorneys in favor of the ***public interest***. **See**, **Plyler v. Texas**, 457 U.S. 202 (1982). However on their face, the Rules apply to all litigants. Attorneys, like ax murders and other citizens, are entitled to due process and equal protection.

Finally, this Court should also act herein as a Court of last resort, where the Petitioner may be **dead** before this cause makes its way back to this Court. This matter broadly affects all attorneys and their clients, whose rights to appear before the federal courts as in the case at bar, are uniquely affected, but are not subject to review. **Cf.**, **Florida v. Rodriguez**, 469 U.S. 1, 7, 105 S.Ct. 308, 311, 83 L.Ed.2d 165 (1984)(Brennan, J. dissenting on jurisdiction).

CONCLUSION

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Petitioner, CALVIN DAVID FOX, prays that this Petition for Certiorari jurisdiction be granted and that this Court will review this cause upon the merits.

CALVIN DAVID FOX
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APPENDIX TO BRIEF OF PETITIONER ON JURISDICTION

APPENDIX TO
BRIEF OF PETITIONER ON JURISDICTION
INDEX

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-16027
Non-Argument Calendar

D.C. Docket No. 04-60231-CV-JIC

CALVIN DAVID FOX,

Plaintiff-Appellant,

versus

STATE OF FLORIDA,
JOHN F. HARKNESS,

Defendants-Appellees.

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*Appeal from the United States District Court
for the Southern District of Florida

(June 17, 2005)

Before ANDERSON, DUBINA and KRAVITCH, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Calvin David Fox appeals the district court's dismissal of his civil rights action brought pursuant to 42 U.S.C. § 1983. Fox's complaint seeks to challenge the Florida Supreme Court's decision upholding the suspension of his law license. We conclude that the district court lacked jurisdiction to hear this case under the doctrine set forth in District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476-82 (1983), and Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923), and therefore affirm.

I. Facts

Fox's complaint alleges due proces violations in Florida's suspension of his law license. According to the complaint, John Serbin, the husband of one of Fox's clients, filed a complaint against Fox with The Florida Bar alleging that Fox failed to return monies obtained during his representation of Linda Serbin, John's wife. After an investigation, the bar's grievance committee requested that Fox turn over documentation of the representation and of the related financial accounts. After Fox repeatedly failed to produce the requested documents, the bar subpoenaed them. When Fox again failed to produce them, the grievance committee held a hearing on the issue of his failure to comply. Fox was unable to attend due to a scheduling conflict, for which the committee refused to reschedule the

hearing. At the hearing the grievance committee found no good cause for Fox's failure to comply.

Fox responded to the grievance committee ruling and was granted a rehearing before a referee. At the rehearing, Fox admitted his non-compliance with the subpoena and agreed to produce the records, but contested the proceedings on due proceess grounds. The referee therefore ruled that if Fox failed to produce the documents, his license would be suspended until he complied. Fox then moved to vacate the referee's recommendations, but his motion was denied. Fox later petitioned for review by the Florida Supreme Court, which upheld the suspension. Fox's subsequent petition for rehearing before the state supreme court was denied.

Fox then filed the present action against the State of Florida in federal district court in the Southern District of Florida.[0] He alleged that the

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[1] The complaint was served on John Harkness, Executive Director of The Florida Bar. "In an abundance of caution" due to ambiguities in the complaint, Harkness filed a motion to dismiss below, which was granted along with the state's. Harkness was not a named party, however, in either the original or the amended complaint.

state violated his due process rights under the Florida and federal constitutions. The complaint requested declaratory and injunctive relief, quashing the disciplinary proceedings and reinstating Fox to the bar, as well as damages in the amount of $5,000,000. The state filed a motion to dismiss the complaint.

Fox later filed an amended complaint which added the Florida Supreme Court, The Florida Bar, and six bar officials as defendants. This complaint was never served on The Florida Bar or any of the bar-related defendants. The district court granted the State's motion to dismiss the amended complaint, finding that the Rooker-Feldman doctrine applied, and closed the case. Fox then brought the instant appeal.

II. Standard of Review

We review the district court's determination of subject-matter jurisdiction de novo. Goodman ex rel. Goodman v. Sipos, 259 F.2d 1327, 1331 (11th Cir. 2001). A federal court is obligated to dismiss a case if it determines that it lacks subject-matter jurisdiction, and any party or the court sua sponte may raise the issue at any stage of the proceedings. Id. At 1331 n.6. The court may consider evidence outside the pleadings in determining its subject-matter jurisdiction. Id.

III. Discussion

Fox contends that the Rooker-Feldman

doctrine does not preclude federal jurisdiction over his complaint. Under the doctrine, federal courts lack jurisdiction to review matters previously adjudicated in state court, as well as matters "inextricably intertwined" with the state court judgment. District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 476-82 (1983); Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923). A federal case is "inextricably intertwined" where the federal claim can only succeed to the extent that the state court wrongly decided the issues before it. Goodman ex rel. Goodman v. Sipos, 259 F.3d 1327, 1332 (11th Cir. 2001). If a party had the opportunity to raise federal claims in a state court proceeding, the failure to raise those claims in state court does not grant the district court jurisdiction over them. Id.; Dale v. Moore, 121 F.3d 624, 626 (11th Cir. 1997).

Fox contends that the conditions for application of the Rooker-Feldman doctrine are not met because there was no final judgment in state court, and because the bar's actions were not judicial in nature. In Feldman itself, the Supreme Court held that actions by a state bar are judicial actions. 460 U.S. at 477-80 (holding that a bar committee's decision to deny admission to the bar was a judicial action). We have held that bar disciplinary actions are judicial in nature for Rooker-Feldman purposes. In re Calvo, 88 F.3d

962, 965 (11th Cir. 1996). In the present case, The Florida Bar's activities had many characteristics of a judicial hearing: the grievance committee called witnesses, issued subpoenas, heard evidence, and made factual findings. As such, we find that the bar's actions were indeed judicial.

Because the bar's actions were judicial, the bar's temporary suspension constituted a final judgment. Furthermore, the Florida Supreme Court upheld the bar's order. Either of these rulings constitutes a final judgment for Rooker-Feldman purposes.

Fox also argues that he did not raise his due process arguments in the state proceeding, and that he should therefore be permitted to make those arguments in federal court. We hold, however, that Fox's claims under 42 U.S.C. § 1983 are "inextricably intertwined" with the state bar proceeding and the appeal, and that his constitutional arguments were properly made there.[0] His federal remedy would have been a petition for certiorari to the United States

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0 [2]Because we hold that the due process issues are "inextricably intertwined" with the state bar proceeding, we need not decide whether Fox actually raised them properly in that proceeding.

Supreme Court from the ruling of the Florida Supreme Court, which he did not pursue.

For the foregoing reasons, the judgment of the district court is AFFIRMED.

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 04-16027

CALVIN DAVID FOX

Appellant/Plaintiff,

vs.

THE STATE OF FLORIDA,

Appellees/Defendant(s).

ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

EXCERPT

MOTION FOR REHEARING AND REHEARING EN BANC OF THE APPELLANT

CALVIN DAVID FOX
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Rule 35-6(C) STATEMENT

I express a brief, based upon a reasoned and studied professional judgment, that the panel decision is contrary to the precedent of this Court and that consideration by the full court is necessary to secure and maintain uniformity of decisions of this court: **Long v. Satz**, 181 F.3d 1275 (11th Cir. 1999)(procedure for amending complaint); **Seigel v. Lepore**, 234 F.3d 1163m at 1172 (11th Cir. 2000) (Rooker-Feldman has no application, where the federal issues were not litigated); and **District of Columbia v. Feldman**, 460 U.S 462 . . . (1923); and **Rooker v. Fidelity Trust**, 263 U.S. 413 . . . (1923); and **Verizon Maryland, Inc. V. Public Service Commission of Maryland**, 535 U.S. 635, at 643, n.3 . . . (2002); **Supreme Court of Virginia v. Consumer's Union**, 446 U.S. 719, at 735-736 . . . (1980) and **Pulliam v. Allen**, 466 U.S. 522, at 541-542 . . . (1984).

I express a belief, based upon a reasoned and studied professional judgment, that this appeal involves one or more questions of exceptional importance:

1.) The panel decision relies upon a greatly **erroneous** statement of facts in the attached opinion and a host of **material** errors regarding the proceedings below. The present complaint does **not** arise from any **final** judicial decision of Florida's highest court, which is the predicate for

the **Rooker-Feldman** doctrine. Instead the present complaint arises from an **interlocutory** order of the Florida supreme Court, which imposes a **temporary** suspension of the law license of the undersigned, based upon **administrative** proceedings before a Florida Bar Grievance Committee, at which the undersigned was **wrongfully** excluded after being **required** to appear and defend against the taking of his license. There is **no** final order of the State's highest court. The suspension of the license of the undersigned to make a living at the only occupation he has known for twenty-five (25) years, was imposed **ex parte** without allowing him to appear to defend against the taking of his license. There was never a **full hearing** nor any **opportunity** to litigate any federal or state constitutional issues and these issues were certainly never reviewed by anyone.

Florida Bar officials testified below that The Florida Bar is officially an "Arm of the Florida Supreme Court." Therefore, the misconduct by Florida Bar officials in violation of federal and state law are **not** subject to any **reasonable** review by the Florida supreme Court. The panel decision fails to recite or consider that the undersigned filed motions for protective orders, to protect his client's attorney client confidences and to be allowed to be heard, which were recklessly disregarded by the state officials

in this case. There was no "rehearing" before a referee as recited in the panel opinion. The undersigned also **never** admitted to anything before the Referee as recited in the panel opinion. The panel opinion fails to recite the gross grounds upon which the referee should have disqualified himself, which were ignored by the Defendants below. **Finally**, the panel decision **fails** to recite that **February 29, 2000**, when the undersigned was permitted to appear and to defend against the taking of his license and everyone testified and all records of the Serbin matter were produced, the **same** grievance committee **unanimously** found the Serbin complaint to be **frivolous** and closed its file, finding that Calvin David Fox had done nothing unethical nor improper.

2.) The complaint herein therefore arises from the gross, reckless deprivation of federal and state rights and **ex parte** hearings and misconduct, by persons and the Florida Bar arising during interlocutory administrative proceedings, which resulted in the temporary continuing suspension of the law license of the undersigned, which remains **temporarily** suspended under the terms of the Florida Supreme Court's **temporary** administrative order, largely because of the **sloth** and **ineptitude** of the Florida Bar and its officials, for which the undersigned has no other remedy, but to turn to this Court for relief.

3.) The panel also **erroneously** sustained the trial court dismissal of your Appellant's first complaint, **erroneously** reciting that the trial court **allowed** the filing of the Appellant's first amended complaint . . .

4.) Furthermore, the panel and trial court's decision cannot be resolved with the face of the **Rooker-Feldman** doctrine, which specifically provides that the doctrine is **only** applicable to **final** decisions by a State's highest court sitting in its **judicial** capacity and only applies to those claims, for which there has been a **full** hearing **and** a **reasonable** opportunity to litigate. **District of Columbia v. Feldman**, 460 U.S. at 486, 103 S.Ct. At 1317; **Rooker v. Fidelity Trust**, 263 U.S. at 415, 44 S.Ct. At 150. The temporary, interlocutory, administrative decision by the Florida Supreme Court in the case at bar, was **not** subject to review by the United States Supreme Court under the U.S. Supreme Court's own rules. The reasonable right of review by the U.S. Supreme Court is the **entire** doctrinal basis for the creation of and the application of the **Rooker-Feldman** doctrine. Therefore the **Rooker-Feldman** doctrine had no legitimate application.

5.) Furthermore, the Appellant would suggest that this Court recede from the Rooker-Feldman doctrine, which confuses and obfuscates well-settled doctrines of preclusion, collateral estoppel, abstention, comity and equitable

restraint. **See**, 18 Charles Wright, Arthur Miller & Edward Cooper, **Federal Practice and Procedure**, Section 4469.1, at 657-658 (Supp. 2001); Rowe, Thomas, "Rooker-Feldman: Worth Only the Power to Blow It Up?" 74 Notre Dame L.Rev. 1081 (1999); Bandes, S., 74 Notre Dame L.Rev. 1175 (1999). The fundamental basis for the limitation imposed by the so-called **Rooker-Feldman** doctrine was that there is meaningful review by the United States Supreme Court of all **final**, judicial decisions by the States' highest courts. That fact no longer serves as a reasonable basis for review of the decisions of the States' highest courts. The entire doctrinal basis for **Rooker-Feldman** is no longer legitimate. . . .

LIMITED STATEMENT OF PROCEEDINGS AND FACTS

The undersigned is not your usual wild-eyed, pro se litigant. **See**, Appendix Case List and Resume. He has successfully handled seven cases on the merits before the United States Supreme Court and more than eight hundred and twenty-eight (828) cases on appeal. This is the most important one. He has reversed this Court sitting en banc, in **Strickland v. Washington**, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1985), which this Court's clerks were taught in Law School.

Therefore, on February 23, 2004, Attorney

Fox filed his Verified Complaint against the Defendant, The State of Florida. R1-1. The Defendant, Florida's position was that it and its employees and agencies are not responsible for anything. The Defendant, filed a motion to dismiss alleging inter alia that the Court has no jurisdiction, because of the Rooker-Feldman. Attorney Fox responded as indicated herein, that Rooker-Feldman has no application to these proceedings. Furthermore, before the Court's dismissal, Fox filed a First Amended Complaint. Without considering the Amended Complaint, the trial court dismissed this case upon the Rooker-Feldman doctrine.

THE SERBIN LITIGATION

In **November of 1992**, Linda Serbin, with whom your Plaintiff/Appellant [hereinafter Attorney FOX} had been having an affair, came to him in tears complaining, a.) that her estranged husband had been raping and beating her daughter since she was nine (9) years old with both families' knowledge; b.) that she wanted to divorce Jon Serbin and to save her daughter, who had tried suicide several times; c.) that the bank was about to obtain a final judgment of foreclosure on her $750,000 waterfront house of 21 years for the price of the $300,000 mortgage and she was without legal representation; d.) that she and her husband had both lied under oath to

the creditors' lawyers and to the Court in U.S. bankruptcy proceedings against her husband's business; and e.) that her daughter's personal injury case arising from a fall from a horse at an equestrian center was being grossly mishandled by local counse.

In a letter-agreement, which is dated **November 23, 1992**, Attorney Fox agreed to represent Linda Serbin in the house foreclosure and related matters for the flat sum of $25,000. He took her daughter's personal injury case to competent counsel, who filed and successfully prosecuted the case; and continue to represent Linda Serbin in several matters up to and including **June 5, 1998**. As noted in Attorney Fox's letter-agreement he also was compelled to cease further intimate relations with Linda Serbin.

Thereafter, Attorney Mr. Fox was able for seven (7) months to block successive attempts to sell the Serbin house on the Courthouse steps. On **June 15, 1993**, Linda and Attorney Fox obtained a bona fide buyer for **$465,000** and closed the sale. Just prior to that in **May of 1993**, Attorney Fox also forced the release of **$25,000** from the escrow fund of an unrelated defaulting buyer, who was surreptitiously trying to force the sale on the Courthouse steps.

On **August 4, 1993,**, Attorney Fox gave Linda Serbin a closing statement on the Serbin foreclosure litigation, in which he recited that the

$25,000 escrow funds seized from the unrelated defaulting buyer was accepted as his fee. However, thereafter, for almost five (5) years, Attorney Fox continued to represent Linda Serbin as the plaintiff in the escrow deposit litigation against an unrelated defaulting buyer. Finally on **June 5, 1998**, he obtained an award of the balance of the realtor's escrow deposit of **$27,000**. Thus Linda Serbin had recovered a total of **$517,000** ($465,000 + $25,000 + 27,000), from the sale of her house on the back of Attorney Fox, and she received almost six (6) years of legal fees (November 1992 to June 1998) for the total sum of $25,000.

ESTRANGED HUSBAND, JON SERBIN'S COMPLAINT

On **September 10,1996**, more than three (3) years after the house foreclosure closing statement to Linda Serbin, Attorney Fox received the complaint of Linda Serbin's estranged husband, Jon Serbin, which Jon Serbin had forwarded to Elena Evans an attorney employed by the Florida Bar. Jon Serbin told Elena Evans that Attorney Fox had kept about $18,000 in his trust account since the sale of the Serbin house in June 1993 without authorization. There was no allegation that Jon Serbin had ever been Attorney Fox's client.

In her letter, Elena Evans asked Attorney

Fox to respond to Jon Serbin's complaint, '**to see if this matter should even be referred to a grievance committee**.' Attorney Fox repeatedly replied that Linda Serbin was his only client and he would be happy to respond if she waived her attorney client privilege, which she repeatedly told Attorney Fox that she did not and that she did not wish to make any complaint against Attorney Fox. A12; 13-14; 19-23; 26-32; 64-77; 131-141; 166-174. Indeed, if Attorney Fox had produced the written agreement and closing statement (A182-188), in order to defend against the Jon Serbin complaint to show that Jon Serbin's complaint against Attorney Fox was **frivolous**, Attorney Fox would have become a witness against Linda Serbin in her own divorce and a witness against her in state and federal criminal proceedings.

1998 EX PARTE HEARING

Neither Evans nor any other **employee** of the Florida Bar has ever expressed any concern nor responded to Attorney Fox's selfless effort to protect his client's confidences. However, after the 11th Circuit Grievance Committee in Miami got Attorney Fox's response it did **not** proceed. Ms. Evans then transferred the case to the 17th Circuit Grievance Committee. In **April 1997**, the 17th Circuit Grievance Committee **after** it received the same response as Attorney Fox had

given Ms. Evans, the 17th Circuit Committee declined to proceed and **closed** its file.

In **September 1997**, Defendants Evans and Freshman, without convening the 11th Circuit Grievance Committee, set a final hearing for **January 20, 1998** at 5:30 o'clock p.m. upon ***"the Complaint of Jon Serbin."*** No other matter was noticed for hearing. On the face of the Notice Attorney Fox was commanded to appear and to defend against the taking of his license upon the complaint of Jon Serbin. A33-34. Attorney Fox had a previously scheduled federal arbitration trial in Seattle, Washington on **January 20, 1998** at 9:00 o'clock a.m. A35; 36-38 Therefore, Attorney Fox promptly upon receipt of said notice cited to the standing 11th Circuit ***Federal State Administrative Conflict Order*** and made two (2) written requests by letter and motion respectively asking for a delay of three (3) weeks to appear and defend against the taking of his license. 35; 36-37; 39-40; 41-42. Ms. Evans and former Grievance Committee Chairman Lawrence Freshman, disregarded Attorney Fox's inability to appear and defend against the taking of his license and Motions for a Protective Order. Instead, on January 20, 1998, the Grievance Committee proceeded with EVANS; and only three (3) of eleven (11) voting members. At the hearing on January 20, 1998, the only matter presented an discussed on the record was the

complaint of Jon Serbin. The only matter the Committee was interested in was the Serbin matter. A46-63. **Without Attorney Fox's knowledge or permission** and without explaining her rights, for almost two (2)years EVANS constantly, unethically and illegally contacted and harassed Attorney Fox's client, Linda Serbin, to make a complaint against Attorney Fox, which she consistently refused to do. After almost two years of being harassed and worn down Serbin reluctantly appeared unsworn on the telephone.

REVIEW OF THE JANUARY 20, 1998 EX PARTE PROCEEDING

The Supreme Court did not review the ex parte proceedings but instead remanded for **administrative** proceedings before an **administrative** hearing officer. The following issues, which are only a sample, were argued by Fox, but were not afforded any meaningful review by the administrative officer nor the Florida Supreme Court: a.) the hearing officer should disqualify himself; b.) the Florida Bar had ex parte contact with the hearing officer; c.) the proceedings on January 20, 1998 were ex parte; d.) the proceedings on January 20, 1998 ignored the motions for protective order and other pleadings filed to protect the rights of his client and the Appellant; e.) that FRESHMAN was incompetent in disregarding Attorney Fox's letter

and Motion for a continuance; f.) Siegel cannot just disregard what happened before the Grievance Committee.

NO MEANINGFUL OR FAIR REVIEW

On **November 24, 1999**, Thanksgiving, without discussion or argument, DEFENDANT, Florida Supreme Court, simply issued an interlocutory administrative order, which was prepared by its arm, the Florida Bar, which rubber stamped the rubber stamp by Referee Siegel of the 1988 **ex parte** Grievance Committed hearing and ordered that Attorney Fox's license should be **temporarily** suspended until he complied with the Evans/Freshman punitive subpoena. The form administrative order, prepared by the Florida Bar provides that the Florida Bar may file a Notice of Compliance to undo the Court's temporary administrative suspension. On **October 2, 2000**, the United States Supreme Court denied certiorari without comment, which has no value in these proceedings, because under its own rules, no review is allowed in this cause, where Florida supreme Court's order is a non-final, interlocutory order. **See**, Sten & Gressman, **Supreme Court Practice** (4th Ed. 1969), pp. 93-110; 180-182.

Subsequent to the January 20, 1998 Grievance Committee hearing, Defendant, Evans, left the offices of the Florida Bar. Therefore, on

February 29, 2000, new counsel, Wenzel, promptly scheduled a hearing **before the same 11th Circuit Grievance Committee** upon the complaint of Jon Serbin. A180-A181. Again, Fox was commanded to appear and to defend aghast the taking of his livelihood. **Id.** At said hearing, Linda appeared for the **first** time and for the **first** time Attorney Fox was allowed to appear and to defend his license. It was demonstrated that Jon Serbin's complaint was **frivolous**. A189.

On **July 20, 1998**, January 16, 2001; December 4, 2001; June 11, 2003; and April 28, 2004, either Fox or Florida Bar President Aronovitz complained of these circumstances to Boggs and the Florida Bar. But neither Defendant Boggs nor anyone at The Florida Bar has ever responded. A80-93. The Defendant, The Florida bar, testified below that it is, "**an arm of the Florida Supreme Court**" and this justifies the complete lack of separation and failure to supervise between the Florida Supreme Court and the Defendant.

ARGUMENT

The panel decision is contrary to the precedent of this Court and that consideration by the full court is necessary to secure and maintain uniformity of decisions of this court in **Long v. Satz**, 181 F.3d 1275 (11th Cir. 1999) (for the amendment of complaints); and **Siegel v. Lopore**, 234 F.3d 1163, at 1172 (11th Cir. 2000) (where

federal constitutional issues have not been litigated, Rooker-Feldman is not applicable); and the U.S. Supreme Court doctrine represented by **District of Columbia v. Feldman**, **supra**; and **Rooker v. Fidelity Trust**, (there must be a **full hearing** and a **reasonable opportunity** to litigate the federal issues); **see**, **Verizon Maryland v. Public Service Commission**, **supra** (the doctrine has no application to review of executive and administrative action); **Supreme Court of Virginia v. Consumer's Union** and **Pulliam v. Allen**, (the Rooker-Feldman doctrine does not apply to prospective relief against a judicial officer). The panel decision relies upon a greatly **erroneous** statement of facts in the attached opinion and a host of **material** errors regarding the proceedings below.

Florida Bar officials testified below that The Florida Bar is officially an "Arm of the Florida Supreme Court." Therefore, the misconduct by Florida Bar officials in violation of federal and state law are **not** subject to any **reasonable** review. The **unheard** complaint herein therefore arises from the gross, reckless deprivation of federal and state rights and **ex parte** hearings and misconduct, by persons and the Florida Bar arising during interlocutory administrative proceedings, which resulted in the temporary and continuing suspension of the law license of the undersigned, which under the terms

of the Florida Supreme Court's **temporary** administrative order, largely because of the **sloth** and **ineptitude** of the Florida Bar and its officials, for which the undersigned has no other remedy.

The temporary, interlocutory, administrative decision by the Florida Supreme Court in the case at bar, was **not** subject to review by the United states Supreme Court under the U.S. Supreme Court's own rules. The reasonable right of review by the U.S. Supreme Court is the **entire** doctrinal basis for the creation of and the application of the **Rooker-Feldman** doctrine. Therefore the **Rooker-Feldman** doctrine had no application. Furthermore, the Appellant would suggest that this Court recede from the Rooker-Feldman doctrine, which confuses and obfuscates well-settled doctrines of preclusion, collateral estoppel, abstention, comity and equitable restraint. The fundamental basis for the limitation imposed by the so-called **Rooker-Feldman** doctrine was that there is meaningful review by the United States Supreme Court of all **final**, judicial decisions by the States' highest courts. That fact no longer serves as a reasonable basis for review of the decisions of the States' courts. The doctrinal basis for **Rooker-Feldman** no longer exists.

CONCLUSION

WHEREFORE, upon the foregoing and

such other terms as this Court deems just, your Appellant, CALVIN DAVID FOX, prays that this Honorable Court will grant rehearing en banc and rehearing reverse the order of the judgment of the U.S. district Court dismissing the Complaint.

CALVIN DAVID FOX
Florida Bar No. 192098

. . .

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CASE NO. 04-16027F
U.S.D. Case 04-60231-CIV-COHN
Magistrate: Snow

CALVIN DAVID FOX,
Appellant,

vs.

THE STATE OF FLORIDA,
Appellee(s).
_____/

NOTICE OF ADDITIONAL AUTHORITY IN SUPPORT OF REHEARING AND REHEARING EN BANC

COMES NOW, the Appellant CALVIN DAVID FOX, and hereby submits this Notice of Additional Authority in Support of Rehearing and Rehearing En Banc, to wit:

1.) The opinion of this Court's panel recites: "[Fox's] federal remedy would have been a petition for certiorari to the United States supreme Court from the ruling of the Florida Supreme Court, which he did not pursue." **Panel opinion**, p.6.

2.) The Appellant's brief recites at page 25 that, "[o]n **October 2, 2000**, the United States Supreme Court denied certiorari without comment." **See**, **Fox v. Florida**, _____ U.S. _____ (Case No. 99-1887, Opinion filed October 2, 2000).

3.) Sterns & Gressman, **Supreme Court Practice** (4th Edition 1969), pp. 93-110; 180-182 (non-final orders of State Courts are not reviewable).

RESPECTFULLY SUBMITTED, on this 8th day of July, 2004 at Jupiter, Palm Beach County, Florida.

CALVIN DAVID FOX . . .

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 04-16027-FF

CALVIN DAVID FOX,
Plaintiff-Appellant,

versus

STATE OF FLORIDA,
JOHN F. HARKNESS,
Defendant-Appellees.

On Appeal from the United States District Court
for the Southern District of Florida

ON PETITION(S) FOR REHEARING AND
PETITION(S) FOR REHEARING EN BANC

Before: ANDERSON, DUBINA and KRAVITC, Circuit Judges

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTER FOR THE COURT:

DATE: AUGUST 17, 2005

_____

UNITED STATES CIRCUIT JUDGE

SUPREME COURT OF FLORIDA

Wednesday, November 24, 1999

THE FLORIDA BAR, CASE NO.: 92-484

Complainant,

vs.

CALVIN D. FOX,
Respondent.
_____/

After review of the report of the referee and the briefs submitted by both the Florida Bar and Respondent, we hereby approve the recommendation of the referee and suspend the Respondent frm the practice of law until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997. This suspension shall be effective 30 days from the filing of this order so that Respondent can close out his practice and protect the interests of existing clients. If Respondent notifies this court in writing that he is no longer practicing and does not need the 30 days to protect existing clients, this Court will enter an order making the suspension effective immediately. Respondent shall accept no new business from the date this

order is filed.

The suspension shall not go into effect if Respondent satisfactorily complies with the subpoena within the 30 day period. Satisfactory compliance with the subpoena shall be stated in a notification to the referee by the Florida Bar. If the suspension becomes effective, it shall continue until such time as notice of compliance is made by the Florida bar. Any dispute as to whether compliance is satisfactory shall be determined by the referee.

Respondent's Motion to Strike Record and Motion to Discharge Notice of Noncompliance are hereby denied. Not final until time expires to file motion for rehearing and, if filed, determined. The filing of a motion for rehearing shall not alter the effective date of this suspension.

Debbie Causseaux
Acting Clerk, Supreme Court

cc: Hon. Paul Siegel, Referee
Mr. Billy Jack Hendrix
Mr. Gregg D. Wenzel
Mr. Calvin David Fox

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF
FLORIDA

CASE NO. 04-60231

CALVIN DAVID FOX, CIV-COHN
Plaintiff,

vs.

THE STATE OF FLORIDA,
Defendant.
_____/

VERIFIED COMPLAINT

COMES NOW, the Plaintiff, CALVIN DAVID FOX, and pursuant to sections 2 and 9 of the Florida Constitution and Amendments V and IV and Section 1 of the United States Constitution and Section 1983 of Title 42 U.S. Code and sues the State of Florida and as grounds therefore shows: . . .

1.) That this Court has pendent jurisdiction over violations of state and federal law and constitutions and Section 1983 Title 42 USC. . . .

3.) That the Plaintiff is a resident and citizen of Jupiter, Palm Beach County, Florida and within this Court's jurisdiction.

4.) That the Defendant, THE STATE OF

FLORIDA, is a state, under whose authority and color of state law, which the agencies/entities, THE FLORIDA BAR and the FLORIDA SUPREME COURT are contained protected and have denied the Plaintiff due process of law and equal protection of the laws and constitutions of Florida and the United States, which claims are within this Court's jurisdiction.

III.
STATEMENT OF FACTS
THE SERBIN LITIGATION

5.) In **November of 1992**, Linda Serbin, with whom your Plaintiff [hereinafter Mr. Fox], had been having an affair, came to him in tears complaining, a.) that her estranged husband had been raping and beating her daughter since she was nine (9) years old with both families' knowledge; b.) that she wanted to divorce Jon Serbin and to save her daughter, who had tried suicide several times; c.) that the bank was about to obtain a final judgment of foreclosure on her $750,000 waterfront house of 21 years for the price of $300,000 mortgage and she was without legal representation; d.) that she and her husband had both lied under oath to the creditors' lawyers and to the Court in U.S. bankruptcy proceedings against her husband's business; and e.) that her daughter's personal injury case arising from a fall from a horse at an equestrian center was being grossly mishandled by local counsel.

6.) That in THE ATTACHED letter dated **November 23, 1992** Mr. Fox agreed to represent Linda Serbin in the house foreclosure and related matters for the flat sum of $25,000. He took her daughter's personal injury case to competent counsel, who filed and successfully prosecuted the case; and continued to represent Linda Serbin in several matters up to and including **June 5, 1998**. As noted in Mr. Fox's letter he also was compelled to cease further intimate relations with Linda Serbin.

7.) Thereafter, Mr. Fox was able for seven (7) months to block successive attempts to sell her house on the Courthouse steps. On **June 15, 1993**, Linda and Mr. Fox obtained a bona fide buyer for **$465,000** and closed the sale. Just prior to that in **May of 1993**, Mr. Fox also forced the release of **$25,000** from the escrow fund of an unrelated defaulting buyer, who was apparently trying to force the sale on the Courthouse steps.

8.) On **August 4, 1993**, Mr. Fox gave Linda Serbin a closing statement on the Serbin foreclosure litigation, in which he recited that the $25,000 escrow funds seized from the unrelated defaulting buyer was accepted as his fee. However, he also recited that on June 15, 1993, in order to assist her in moving, he had given $5,000 of his fee back to Linda Serbin. However, Mr. Fox's November 23rd fee agreement was nevertheless satisfied. **STATEMENT**,

ATTACHED HERETO.

9.) Thereafter, without any further fees, Mr. Fox continued to represent Linda Serbin as the plaintiff in the escrow deposit litigation against an unrelated defaulting buyer. Finally on **June 5, 1998**, he obtained an award of the balance of the realtor's escrow deposit of **$27,000**. Thus Linda Serbin had recovered a total of **$517,000** ($465,000 + $25,000 + $27,000), from the sale of her house on the back of Mr. Fox, and she received almost six (6) years of legal fees (November 1992 to June 1998) for the total sum of $25,000. A more detailed discussion is contained in Mr. Fox's letter of July 20, 1998 to Gregg Wenzel of the Florida Bar.

JON SERBIN'S COMPLAINT

10.) On **September 10, 1996**, more than three (3) years after the house foreclosure closing statement to Linda Serbin, Mr. Fox received the complaint of Jon Serbin, which was forwarded by Elena Evans of the Florida Bar. Jon Serbin told Elena Evans of the Florida Bar that Mr. Fox had kept about $18,000 in his trust account since the sale of the Serbin house in June 1993 without authorization. Jon Serbin had never been Mr. Fox's client. Jon Serbin's theory was apparently that Mr. Fox represented Linda Serbin since 1993 for free.

11.) In her letter, Elena Evans asked Mr. Fox to respond to Jon Serbin's complaint, '**to see**

if this matter should even be referred to a grievance committee.' Mr. Fox replied that Linda Serbin was his only client and he would be happy to respond if she waived her attorney client privilege, which she repeatedly told Mr. Fox that she did not and that she did not wish to make any complaint against Mr. Fox. If Mr. Fox had produced the enclosed written agreement to defend against the Jon Serbin complaint to show Jon Serbin's complaint was **frivolous**, Mr. Fox would have become a witness against Linda Serbin in her own divorce and a witness against her in state and federal criminal proceedings. Ms. Evans did not give a damn about any of this, nor Mr. Fox's selfless attempt to protect Linda Serbin's attorney client privilege.

1998 EX PARTE HEARING

12.) As noted above, throughout the proceedings being handled by Elena Evans and the Florida Bar from September 1996 up to June 1999, Mr. Fox reiterated, a.) that he would be glad to cooperate and offer to produce all documents *in camera*, but b.) that Linda Serbin had never made any complaint and did not wish to; c.) that Jon Serbin was not Mr. Fox's client; and d.) that in order to defend against the complaint of Jon Serbin to show it was frivolous, he would have to disclose the extreme confidences of Linda Serbin, exposing her to ridicule and scorn in the community and to

prosecution in federal and state criminal proceedings, and the disclosure would make Mr. Fox a witness against his own client.

13.) Ms. Evans did not give a damn about Mr. Fox's response nor his client's attorney client privilege. However, after the 11th Circuit Grievance Committee in Miami got Mr. Fox's response it did not proceed. Ms. Evans then transferred the case to the 17th Circuit.

14.) In **April 1997**, the 17th Circuit Grievance Committee issued a **punitive** subpoena for all client records. However, after the 17th Circuit Grievance Committee received the same response as Mr. Fox had given Ms. Evans, it declined to proceed and closed its file. The case was then transferred back to Ms. Evans in the 11th Circuit.

15.) In **September 1997**, Ms. Evans reissued the same **punitive** subpoena as the 17th Circuit committee had issued asking for all client records. Mr. Fox again responded as noted above. A hearing was set by Evans for **January 20, 1998** at 5:30 o'clock p.m. upon "***the Complaint of Jon Serbin***." No other matter was noticed for hearing. Mr. Fox was required by the Notice to appear and defend. However, Mr. Fox had a previously scheduled federal arbitration trial in Seattle, Washington on **January 20, 1998** at 9:00 o'clock a.m. Mr. Fox promptly cited to the standing *Federal State Administrative*

Conflict Order and made two written requests by letter and motion respectively asking for a delay of three (3) weeks to appear and defend against the taking of his license.

16.) Ms. Evans and former Grievance Committee Chairman Lawrence Freshman, did not give a damn about the *Federal State Administrative Conflict Order* nor Mr. Fox's inability to appear and defend against the taking of his license. Nevertheless in the hearing transcript on January 20th it was undisputed that Mr. Fox was in a federal arbitration trial in Seattle, Washington. However, the Committee proceeded with Evans and only three (3) of eleven (11) members present. Furthermore, without notice to Mr. Fox and despite her repeated previous assurances to him, Linda Serbin appeared unsworn on the telephone. The Grievance Committee, without Mr. Fox's appearance, issued a recommendation that his license be temporarily suspended.

17.) What is wholly apparent here is that there was gross delay by Elena Evans and the Florida Bar upon the Jon Serbin complaint between September 1996 and the January 20, 1998 hearing. To understand this delay, one would only have to consider Mr. Fox's consistent response that Jon Serbin was **not** his client and that Linda Serbin had uniformly refused to make any complaint and did not want to make any

complaint. Therefore, **without Mr. Fox's knowledge or permission** and without explaining her rights, for almost two (2) years the Florida bar constantly harassed Mr. Fox's client, Linda Serbin, to make a complaint against Mr. Fox, which she consistently refused to do. Finally, after almost two years of being harassed she reluctantly appeared unsworn on the telephone. However, even then, in Florida an unsworn statement on the telephone is not competent evidence.

THE APPEAL ON THE 1998 EX PARTE PROCEEDING

18.) The history of the proceeding is detailed in the Petition for Certiorari, which Mr. Fox filed in the United States Supreme Court. Mr. Fox strongly believes that the actions of Ms. Evans in disregarding his client's attorney client privilege; and in surreptiously contacting and harassing his client; and in disregarding his due process rights were patently **unlawful**.

19.) However, the Florida Supreme Court is buried with fully one third of its case load involved in attorney discipline matters. Moreover, the referee, Paul Siegel (who had been engaged in a struggle with Mr. Fox for the same judicial position), did not care about Mr. Fox's due process rights, nor his client's attorney client privilege. Therefore, after only one (1) brief hearing, Referee Siegel rubber stamped the

Grievance Committee's order of temporary suspension. However, in June of 1998, while this matter was proceeding before the Referee, Linda Serbin had finally relented and made a pro forma written complaint. Therefore Mr. Fox made an effort to settle with Gregg Wenzel. However the settlement failed when Wenzel's supervisor refused to cooperate upon the terms Wenzel had agreed to.

20.) During Thanksgiving of 1999 the Florida Supreme Court rubber stamped the rubber stamp by Referee Siegel of the 1998 ex parte Grievance Committee hearing and order that Mr. Fox's license should be **temporarily** suspended until he complied with the 11th Circuit punitive subpoena. The Florida Supreme Court's order ATTACHED HERETO provides that the Florida Bar may file a Notice of Compliance and in any dispute the Referee shall decide if Mr. Fox has complied.

21.) That in particular, the Florida Supreme Court's order ATTACHED HERETO unlawfully denies Mr. Fox equal protection and due process afforded even the worse criminals, in that the Florida Supreme Court's order states, "**the filing of a motion for rehearing shall not alter the effective date of this suspension**." [Emphasis supplied].

2000 GRIEVANCE FINDING OF NO PROBABLE CAUSE

22.) Subsequent to the January 20, 1998 Grievance Committee hearing, Evans may have been terminated. On **February 29, 2000**. The Florida Bar through its new counsel, Wenzel, scheduled a hearing **before the same 11th Circuit Grievance Committee** upon the complaint of Jon Serbin as adopted by the Linda Serbin.

23.) At said hearing, Linda appeared for the first time and for the first time Mr. Fox was allowed to appear and to defend his license. For the first time, Mr. Fox was allowed to produce the November 23, 1992 agreement with Linda Serbin. It was demonstrated that Jon Serbin's complaint was **frivolous**. All Serbin records were produced to the satisfaction of the Grievance Committee. Therefore, on **March 14, 2000** the Grievance Committee issued the attached **unanimous** finding of no probable cause and in a later letter to the Serbins recited:

> "You are advised that [the Complaint against Calvin D. Fox] has been investigated and considered by this committee. It is our decision that there is insufficient evidence to support finding probable cause to believe that a violation of professional ethics has occurred which warrants the imposition of discipline because: there is insufficient evidence to support your allegation that [Calvin D. Fox] improperly disbursed funds from his

trust account."

24.) That Mr. Fox has sent two letters of Complaint to the President of the Florida Bar and one letter seeking relief to the Florida Board of Governors.

25.) That Mr. Fox has been complaining of the denial of his rights to due process and equal protection under State and Federal law to the Florida bar since 1999.

26.) That the Florida Bar claims that it is, "**an arm of the Florida supreme Court**." The illusion of fairness, due process and objective consideration of claims filed by the Florida Bar in the Florida Supreme Court is a fiction.

27.) That as of the date of this complaint the State of Florida has done nothing to remedy this circumstance, but instead has expressed that it will exercise the opportunity to permanently remove the undersigned from the Florida Bar four years from the date the temporary suspension order of the Florida supreme Court was final and appealable to the United States Supreme Court.

DENIAL OF DUE PROCESS AND EQUAL PROTECTION

28.) That the foregoing paragraphs numbered 1 to 27 are re-alleged herein verbatim.

29.) The commencement of an action against Mr. Fox's law license and the continued suspension of his license has been **manifestly unjust** as demonstrated by the finding of no

probable cause on **February 29, 2000**.

30.) But for Elena Evan's unlawful contact with this client and complete disregard for her confidences and his due process rights, this matter would have been concluded in 1996 and closed with the same result as it did upon the hearing of February 29, 2000.

31.) On Jon Serbin's complaint, at the risk of his livelihood and license, Mr. Fox sought to protect his client against the disclosure of her most closely held confidences.

32.) If Mr. Fox had been allowed a modicum of due process and if there was any respect by Ms. Evans for his client's attorney client confidences, this matter would have been concluded in 1996 as apparently three (3) other Grievance Committees in 1996, 1997 and 2000 decided that it should be.

33.) Mr. Fox's concern for his client's confidences from 1996 to June 6, 1999 were quite legitimate. In **Doe v. The Supreme Court of Florida**, 734 F.Supp. 981, at 988 (S.D. Fla. 1990), the Florida Bar's confidentiality rule was struck down. Therefore, between 1996 and June of 1999, Jon Serbin and state and federal prosecutors would have been free to use the enclosed contract between Mr. Fox and Linda Serbin to proceed against Ms. Serbin. If Mr. Fox had disclosed her confidentialities in 1996, without her waiver of her right confidentiality,

Ms. Serbin would **then** have had a legitimate complaint against Mr. Fox.

33.) Ms. Serbin did not waive her attorney client confidentiality until **June 6, 1999**. However, **no effort** was made by Evans nor anyone else at the Florida Bar to respond to Mr. Fox's concerns for his client's confidences and his due process rights were utterly trampled.

34.) When Mr. Fox was allowed to defend his license for the first time on **February 29, 2000** before the same Grievance Committee, which had ordered his license temporarily suspended in 1998, they found the Serbins' complaint **frivolous**.

35.) The Defendants agencies, the FLORIDA BAR and the FLORIDA SUPREME COURT, have sought to create the false illusion that complaints by the FLORIDA BAR are fairly, impartially and with all due consideration to due process and equal protection are considered by the FLORIDA SUPREME COURT.

36.) That there is no lawful separation between the FLORIDA BAR and the FLORIDA SUPREME COURT and complaints by the former filed with the latter are rubber stamped without regard to serious and chronic violations of the code of ethics by the FLORIDA BAR and denial of fundamental due process rights.

37.) In addition, the order temporarily suspending Mr. Fox, with its language denying

Mr. Fox equal protection and benefit of the Rules of Appellate Procedure, is a "**standard order**" in all Attorney matters and was **authored and written** by the FLORIDA BAR for the FLORIDA SUPREME COURT.

38.) That Mr. Fox and all attorneys did knowingly not check their constitutional rights at the door, when they became attorneys.

39.) That Mr. Fox and all attorneys are voters, citizens and are entitled to due process and equal protection, just like any ax murderer before any ax murderer is convicted and the appeal decided. That is **not** the case as demonstrated by the reckless disregard of Mr. Fox's state and federal rights in the case at bar.

40.) That Mr. Fox has exhausted all administrative remedies and has made every effort possible to resolve this circumstance prior to filing this complaint.

41.) That the loss of a person's livelihood is one of the most severe events, which can be imposed upon a life. E.G., **Cleveland v. Loudermill**, 470 U.S. 532 (1985); **Fusari v. Steinberg**, 419 U.S. 379 . . . (1975); **Bell v. Burson**, 402 U.S. 535 . . . (1971); **Goldberg v. Kelly** 397 U.S. 254, 264 . . . (1970); **Sanaidach v. Family Finance**, 395 U.S. 337, 340 . . . (1969).

42.) In the present cause as direct and proximate result of the denial of his constitutional and civil rights, Mr. Fox has been unable to

obtain employment in the legal profession nor comparable employment commensurate with his experience and abilities since February of 1998 because of said illicit proceedings conducted by the FLORIDA BAR and rubber stamped by the FLORIDA SUPREME COURT.

43.) That as a direct and proximate result of the denial of his constitutional and civil rights by the DEFENDANT its agencies and assigns, Mr. Fox has suffered severe and permanent pain, mental anguish, loss of ability to earn income now and in the future and from the stress of this circumstance and the loss of his livelihood has suffered severe decline in health and aggravation of pre-existing and severe debilitating medical conditions, for which there is no insurance now available and his life span and ability to enjoy life and his family has been severely damaged.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Plaintiff, CALVIN DAVID FOX, prays that this Court will reverse and quash the proceedings maintained by the STATE OF FLORIDA, to dissolve the present cause against him and order that the Plaintiff be reinstated to the Florida bar, nunc pro tunc to **November 24, 1999** and that this Court will further award damages in excess of five million dollars ($5,000,000), together with interest, attorney fees, costs and such other relief as this Court deems just and appropriate.

CALVIN DAVID FOX
PO Box 7900
Jupiter, Florida 33458
(954) 383-5943

STATE OF FLORIDA :
:SS:
COUNTY OF PALM BEACH :

CAME AND APPEARED, before me, the undersigned authority, Calvin David Fox, who first identifying himself with Florida License No. F200-104-47-177-0 and being sworn deposes and says that the foregoing complaint is true and correct.

SWORN and SUBSCRIBED TO, on this 23rd day of February 2004 at Jupiter, Palm Beach County, Florida. . . .

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 454006
Miami, Florida 33245
(305) 854-1037

November 23, 1992

Linda Serbin
6475 Pine Tree Drive Circle
Miami Beach, Florida 33141

RE: **Contract for Legal Services**

Dear Linda:

This wi'l confirm our agreement to the following as our contract for legal services. Although I love you deeply, our personal life together must be put on hold. In particular, Jon could use our love making as a weapon in all of the matters against him, especially your divorce.

FIRST NATIONAL BANK V. JON SERBIN and LINDA SERBIN
11th Cir. Case 92-13147-CA-24

This will confirm that I will appear in this cause as your attorney and attempt to set aside and stall the stipulation to foreclosure, which Jon

Serbin; his attorney, Ira Gordon; and the Bank's attorney have coerced you into signing.

There is an acute conflict of interest in this and other matters in this agreement and therefore I will not be representing Jon and attorney Ira Gordon will continue to represent Jon. In particular, I trust that you have not disclosed your affair with me to Ira.

This will be an extraordiarily difficult undertaking. We will likely be only able to delay this matter for up to six months in order to obtain a willing buyer such that you will not be required to sell your house at a firesale price on the Courthouse steps. This will confirm that we will endeavor to sell the house at or near the tax assessor's valuation of about $500,000.

We have agreed that my total fees for this representation which would include the present litigation and any subsequent and related litigation; and is unrelated to the success or outcome or our ability to obtain the foregoing value of $500,000 for the house, will be a flat, non-refundable fully earned fee of $25,000, which will be paid as you are able.

LINDA SERBIN v. JON SERBIN

This will confirm that you have consulted with me regarding a contested dissolution proceeding from Jon Serbin, who lives with you and your daughter, Bess Serbin at the above

referenced address. The central reason for consulting with me for divorce arise from Jon's beating and rape of your daughter, Bess Serbin, since she was about nine (o) years old.

I have confirmed that Bess has attempted suicide several times; is prone to severe episodes of self-mutilation and has undergone several years of psychiatric care, which is reported in her pending litigation in **Bess Serbin v. Doral**, 11th Cir. Case 91-57930-CA-15, which is discussed below.

This will confirm that I hae urged you to allow me to present this matter to the State Attorney, which you have so far declined to do. I understand that the beatings and rapes of Bess by Jon and Jon's severe alcoholism have been the subject of several meetings with his family. I can understand your extreme reluctance to allow this matter to become public knowledge, but it is a severe offense and Bess' life has been ruined and she may yet kill herself. She has confirmed these beatings and rapes to me and has indicated that Jon threatens to resume them, despite all the locks on Bess' bedroom door. **You must do something to stop this or allow me to proceed**.

In addition to the foregoing, this will confirm that for about five (5) years you have been living and supporting both Jon and the house with your trust funds from your family. Jon has bled off moneys and assets from his

Company, Serbin Fashions, which is in bankruptcy in **In re Serbin Fashions**, U.S. Southern District of Florida Bankr. Case 91-11699-BKC.

Based upon the foregoing and our discussions, I feel confident that you should remain in control of the remaining assets of the marriage, which principally consist of the house and its contents. You must pursue the allegations of the rape and beating of Bess Serbin. If the sickness and violence of Jon Serbin is not disclosed, his sickness and his alcoholism will remain your burden.

Finally, you must not disclose our long term and intimate relationship to Jon directly or indirectly. He would use those allegations as a weapon in your dissolution proceedings and to add me as a witness against you.

IN RE: SERBIN FASHIONS, INC.
U.S. Southern District of Fla.
Case 91-11699 BKC

This case was filed on April 18, 1991 and involves the bankruptcy of Jon Serbin's business, Serbin Fashions. This does not yet involve you personally, except that you have supported the house and Jon because of his waste of the Company and its assets.

However, you have confirmed that Jon has lied under oath in this case; and you were aware

of this at the time, as to the existence of and locations of assets and cash from Serbin Fashions to the Trustee and to attorneys for the Creditors.

You have similarly lied to the Trustee and/or the attorneys. You must not lie to anyone any further. It is a criminal act prosecuted by the U.S. Attorney. We may be able to urge your alcoholism and the threats of violence and coercion by Jon as a defense.

Additionally, if you are contacted any further in this matter you will refer all further inquiries to me. We will have to arrange the fees and costs of that proceeding as it occurs.

BESS SERBIN v. DORAL EQUESTRIAN CENTER

11th Cir. Case 91-57930

I have reviewed this matter with Bess and I have read the Court file. Malcolm Fromberg her present attorney has botched this case and the settlement, which he has demanded Bess accept is greatly less than the case may be worth with a more aggressive attorney.

I have recommended referring this cause to enable me to work with Carlos Dl Amo at the High, Stack firm to get Bess a much better result, which may include pushing the case to trial. Bess is enthusiastic about proceeding with this strategy. Malcolm has really beaten her up psychologically and worn her down to accept the

pathetic settlement he has obtained.

The defense has been rattling its sword about using Bess' psychiatric records and the rapes and beatings by Jon as an intervening cause for her injuries. I think that such a strategy would blow up on the defense before a sympathetic jury.

My fees for this work will not cost you or Bess anything more. The High, Stack firm will pay my fees as a referral fee out of any proceeds obtained before or after judgment. Their separate agreement with Bess, includes me and all costs.

GENERAL MATTERS

In consideration of these agreements, I will also continue to represent you and Bess in all those other piddling legal matters, which seem to crop up.

I hope that you understand how I feel, but we can no longer act upon these feelings if I am to make these efforts on behalf of you and Bess. Instead, we must adhere to this formal arrangement.

Finally, I would again urge you to allow me to proceed against Jon as to the rapes and beatings of Bess. It is the one matter, which will enable you to recover your life again and to perhaps save your daughter. Please.

Very truly yours,

55

CALVIN DAVID FOX,
Esq.
Fla. Bar No. 192098

LAW OFFICES of
CALVIN DAVID FOX
Post Office Box 454006
Miami, Florida 33245
(305) 854-1037

August 4, 1993

Linda Serbin
9241 Collins Avenue
Apartment 7
Surfside, Florida 33154

RE: **First National Bank v. Serbin**
11th Cir. Case 92-13147-CA-24

Dear Linda:

This will constitute my closing statement for the above referenced litigation.

This will confirm my receipt based upon our agreement to the sum of $25,000 as my earned legal fees on or about June 10, 1993.

This will also confirm that on June 15, 1993, before the closing you asked me to reduce my fees and to remit $5,000 of my fees to assist you with moving. I agreed and you have received $5,000 back from me.

The closing balance in this matter after my fees and the rebate to you in this matter as of this

date is therefore zero dollars.

I hope that everything is going well. At least we got more funds from the house than you ever thought possible.

Very truly yours,

CALVIN DAVID FOX,
Esq.
Fla. Bar No. 192098

IN THE SUPREME COURT OF FLORIDA

CASE NO.
92,484

THE FLORIDA BAR,
Petitioner/Counter-Respondent,

vs.

CALVIN DAVID FOX,
Respondent/Petitioner.
_____/

VERIFIED MOTION TO DISQUALIFY

COMES NOW, the Respondent/Counterpetitioner, CALVIN DAVID FOX, pursuant to Rule 3-7.6(g)(8) Rules of Discipline and Sections 38.02 and 38.10 Fla. Stat. And submits this Verified Motion to Disqualify, to wit:

A. Previously formed adverse opinions

1.) That the present Referee is the same Paul Siegel who expressed pre-existing adverse personal opinions concerning the undersigned before the present proceeding was assigned to him, arising from the following circumstances.

2.) That the undersigned ran for judge in 1988 against Judge Roy Gelber, who was

subsequently convicted of taking bribes, which is what the undersigned told the Miami Herald he would do based upon information received from the Gelber and Glass' former law office manager.

3.) That the campaign against the undersigned by Gelber was particularly ugly based upon allegations impuning the professional ability and integrity of the undersigned.

4.) That after the 1988 campaign and the indictment of Gelber, the undersigned and Paul Siegel both applied to the Judicial Nominating Commission and competed directly in that political arena.

5.) That during 1989 the woman attorney, [who the undersigned will name in camera] who was living with the undersigned, commenced also "seeing" then attorney Paul Siegel.

6.) that during said relationship with the girlfriend of the undersigned and during the course of the competitive Judicial Nominating Commission process, Paul Siegel, expressed a **derogatory** opinion of the professionalism and integrity of the undersigned arising from the campaign against Gelber and Siegel's investigation of the undersigned as a competitor in the Judicial Nominating Commission process.

7.) That in response the girlfriend also expressed the adverse opinions and remarks about Paul Siegel, which were made by the undersigned relating to the competition for the girlfriend, to

Paul Siegel.

B. Previous litigation by the undersigned to block the nomination and to force an election between the undersigned and the Referee

8.) That after Judge Roy Gelber was indicted, convicted and removed from the Florida 11th Circuit Bench, the present Referee was nominated and appointed to the vacancy created by Gelber's removal.

9.) That in **In re: Advisory Opinion to the Governor (Judicial Vacancies)**, Fla. Supreme Court Case 79,694 and related complaints the undersigned sought to block the nomination and appointment of your present Referee to the 11th Circuit Court and to force an election by the undersigned against the Referee for the Referees' present judicial position.

10.) That in addition to the political process before the Judicial Nominating Committee as noted above, the undersigned was previously an adversary of the present referee to prevent him from retaining his present job in the Florida Supreme Court and in the political arena involving the Governor's appointment process and trying to force an electoral process.

C. Ex Parte Contact with the Referee

11.) That during these proceedings the Referee has only communicated to have notices

sent and to schedule hearings with opposing counsel, The Florida Bar.

12.) That on or about July 16, 1998 the Referee again contacted opposing counsel **ex parte** to reschedule the final hearing set in this matter at the convenience of the Florida Bar.

13.) That in violation of the Administrative Orders in this jurisdiction, there was no effort by the Referee or opposing counsel to contact the undersigned with regard to said rescheduling.

14.) That as a consequence of said **ex parte** communication, the undersigned was forced to go through an ordeal of an emergency motion and hearing to reset said hearing.

15.) That the routine, **ex parte** communication with only one side of a case is unlawful. **See, e.g., Ruse v. State**, 601 So.2d 1181, at 1183 (Fla. 1992).

16.) That in addition to the foregoing, the Referee announced on **June 10, 1998** at the first and only previous hearing in this cause, that he would not consider any of the complaint of the undersigned in the Florida Supreme Court that the undersigned had been denied due process in this cause [upon which this matter has been remanded], because "**we are way past that**."

17.) That there is an appearance in this cause, that the Referee is partial in favor of the Florida Bar.

18.) That the reason for the foregoing

appearance is also related to the following routine practice of the Florida Bar of warming up the Referee with **Ex parte** Public Relations material and commentary, which is **not** provided to the Respondent.

19.) That in examining another Florida Bar complaint filed against the undersigned, which was also handled by your Referee on May 15, 1997, the undersigned discovered two volumes of commentary and cases provided **ex parte** by the Florida Bar, which are entitled, "Referee Manual" and "Florida Standards for Imposing Discipline," which have been provided to the Referee **ex parte** without notice or copies to the undersigned. Upon reason and belief, the same public relations material for the Florida Bar has been submitted **ex parte** to the referee in this case.

20.) That the foregoing matters do not just contain a recitation of the necessary or applicable rules. These matters are filled with commentary and opinion by the Florida Bar as to what the Referee should consider in determining the rights of the undersigned and the issues remanded to the Referee in this case.

21.) That the providing of said **ex parte** commentary and opinion and Public Relations material in said materials to the Referee is unlawful. **See, e.g., Rose v. State**, 601 So.2d 1181, at 1183 (Fla. 1992).

22.) That as a consequence of the foregoing

the undersigned believes that he has not and will not receive a fair proceeding before the Referee and that the Referee is biased and prejudiced against the undersigned.

23.) That the undersigned has not presented this motion before this time because of the futility of doing so prior to the hearing in this matter, where in another matter, the present Referee has previously declined to grant this motion on the grounds recited in paragraphs 1 to 7 and 18 to 21. Additionally, the grounds recited in paragraphs 8 to 13 were only discovered just prior to the filing of this motion.

24.) I hereby swear upon penalty of perjury that the foregoing is true and correct within the meaning and intent of Title 28 U.S. Code, section 1746. Executed on this 12th day of August 1998.

CALVIN DAVID FOX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-60231-CIV-COHN/SNOW

CALVIN DAVID FOX,
Plaintiff,

[EXCERPT]

v.

THE STATE OF FLORIDA,
Defendant.
_____/

DEFENDANT'S MOTION TO DISMISS COMPLAINT

Defendant, STATE OF FLORIDA, by and through undersigned counsel, and pursuant to Fed.R.Civ.P. 12(b), hereby moves to dismiss the complaint and in support thereof states:

1. There is insufficiency of service of process as to the Defendant.

2. This Court does not have in personam jurisdiction over the State of Florida, no valid service of process having been accomplished thereon.

3. The Court lacks jurisdiction under the

Rooker-Feldman doctrine because granting the plaintiff's requested relief nullifies orders in state court proceedings.

4. The Complaint should be dismissed because the Defendant is not a "person" under the definition of 42 U.S.C. §1983, and cannot be sued pursuant to this statute.

5. The Plaintiff's claim is barred by the statute of limitations.

6. The Defendant claims Eleventh Amendment immunity from the instant action.

7. The Defendant claims judicial immunity from this action.

8. The Plaintiff has failed to state a cause of action for violation of his constitutional rights to due process and equal protection.

9. Plaintiff has not satisfied the elements of a cause of action for injunctive relief.

10. Plaintiff is not entitled to an award of attorney's fees.

STATEMENT OF FACTS

Plaintiff CALVIN DAVID FOX ("FOX"), is an individual residing in Palm Beach County, Florida, who has brought this lawsuit against the Defendant STATE OF FLORIDA . . . Plaintiff brings this lawsuit pursuant to 42 U.S.C. § 1983. . . . He alleges that the Defendant STATE OF FLORIDA, through its entities the Florida Bar and the Supreme Court of Florida, . . . has violated his constitutional rights to due process of law and equal protection. . . . The Plaintiff's Complaint does not explicitly state at the outset that he was formerly an attorney practicing as a member of the Florida bar, but it is apparent from the facts and exhibits attached to the Complaint that he was a licensed attorney and same is not disputed by Defendant.

Plaintiff's Complaint alleges that he either represented or advised a married woman named Linda Serbin in various matters for an agreed sum during the course of litigation from 1992 to 1998. . . . In 1996, a complaint was allegedly filed with the Florida Bar by Jon Serbin regarding Plaintiff's actions during the course of said litigation. . . He alleges that he was asked to respond to the complaint and refused to do so in order to protect his client. . . . on September 22, 1997, the Florida Bar Grievance Committee for the Seventeenth Judicial Circuit issued a subpoena for all of Plaintiff's client records. . . . He alleges that a hearing was held by the Florida

bar Grievance Committee on January 20, 1998 for which he received a notice to appear and defend, but which he was unable to attend due to a scheduling conflict. . . . Plaintiff alleges that at the January 1998 hearing, his client testified as a witness without his prior notification, and that the grievance committee issued a recommendation that his license to practice law be temporarily suspended. . . .

The Plaintiff then apparently appealed the recommendation of suspension, and that after a hearing had been held by Referee Paul Siegel, the recommendation of a temporary suspension was affirmed. . . . On November 24, 1999, after a review of the Referee's recommendations, the Supreme Court of Florida "approve[d] the recommendation of the referee and suspend[ed] the [Plaintiff] from the practice of law until such time as he is in compliance with the Grievance Committee subpoena of September 22, 1997." . . . Plaintiff's Complaint is devoid of any allegations that he has complied with the September 22, 1997 subpoena to produce "all client records." . . . The Plaintiff's license to practice continues to remain suspended to date. . . .

Plaintiff claims that the STATE OF FLORIDA's action through the Florida Bar and the Supreme Court of Florida violated his due process and equal protection rights under federal and state law. . . . Plaintiff claims that as a result

of the suspension of his license to practice law, he has suffered pain, mental anguish, loss of ability to earn income, aggravation of health conditions and loss of enjoyment of life. . . . He seeks as relief that this Court "reverse and quash the proceedings maintained by the STATE OF FLORIDA, to dissolve the present cause against him and order [him] reinstated to the Florida Bar" and also damages in excess of five million dollars with interest, attorneys' fees and court costs. . . . For the reasons set forth more fully below, the Defendant asserts that the Plaintiff's Complaint must be dismissed.

MEMORANDUM OF LAW

Standard for Motion to Dismiss

A motion to dismiss for failure to state a claim upon which relief can be granted is to allow the court to eliminate actions that are fatally flawed in their legal premises and destined to fail, and thus spare litigants burdens of unnecessary pretrial and trial activity. . . . A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. . . . Factual allegations supporting a claim "must be plead with sufficient clarity so as to 'give the defendant fair notice of what the plaintiff's claim is and the grounds on which it rests.'" . . .

All facts alleged in the complaint are accepted as true and construed in the light most favorable to the plaintiff except when the facts alleged are internally inconsistent or when they run counter to facts of which the court can take judicial notice. . . . Also, conclusory allegations and unwarranted deductions of fact need not be accepted as true. . . .

III. The doctrine of Rooker-Feldman abstention applies.

The Plaintiff has previously had the opportunity to raise the issues presently at bar in Florida Courts throughout the course of his suspension proceedings. As his complaint indicates, there have been at least three hearings before the Grievance Committees, and numerous other opportunities for him to petition the Referee or the Florida Supreme Court for the relief sought herein. Therefore, he is barred from raising said issues in this Court by the Rooker-Feldman doctrine, which states:

> Lower federal courts possess no power whatsoever to sit in direct review of state court decisions. If the constitutional claims presented to a United States district court are inextricably intertwined with the state court's denial [of a claim] in a

> judicial proceeding . . . then the district court is in essence being called on to review the state-court decision. This is the district court may not do.

District of Columbia Court of Appeals v. Feldman, 460 U.S. 462, 482n. 16, 103 S.Ct. 1303, 1315n. 16 (1983). Such a review rests solely in the United States Supreme Court. Id.; Rooker v. Fidelity Trust Co., 263 U.S. 413, 44 S.Ct. 149 1923). Lower federal courts are precluded from review even if a Plaintiff failed to raise the constitutional claims in the state court if it is "inextricably intertwined" with the state court judgment. See Wood v. Orange County, 715 F.2d 1543, 1546 (11th Cir. 1983), cert. Denied, 467 U.S. 1210 (1984). A federal claim is "inextricably intertwined" with a state court judgment, and therefore unreviewable even if they were not raised in the state court, if the federal claim succeeds only to the extent that the state court wrongly ecided the issues before it. See Datz v. Kilgore, 51 F.3d 252, 253-54 (11th Cir. 1995).

Plaintiff is attempting to use this court as a "super-appellate" court, barred by Rooker-Feldman. See also Goodman v. Sipos, 259 F.3d 1327, 1332-33 (11th Cir. 2001) (citing Liedel v. Juvenile Court of Madison County, Ala., 891

F.2d 1542 (11th Cir. 1990)). Therefore, abstention principles should be applied to preclude the exercise of that jurisdiction where there is a separate court proceeding against the Plaintiff where the issues concerned were or could have already been raised. . . .

IV. **Defendant STATE OF FLORIDA is not a proper party under a 42 U.S.C. § 1983 action.**

The Defendant, STATE OF FLORIDA is the entity comprising the state government of Florida. 42 U.S.C. § 1983 provides a cause of action for deprivations of civil rights by persons acting under color of state law. To quote the statute's language, "every **person** who, under color of any statute, ordinance, regulation, custom or usage, . . . subjects or causes to be subjected any citizen . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party . . ." 42 U.S.C. § 1983. In order to state a cause of action under 42 U.S.C. § 1983, the plaintiff must allege that some **person** has deprived him of a federal right and the person who has deprived him of that right acted under color of state or territorial law. Gomez v. Toledo, 446 U.S. 635, 100 S.Ct 1920, 64 L.Ed.2d 572 (1980) (emphasis added). The United States Supreme Court has determined that states and state agencies are not

"persons" within the meaning of 42 U.S.C. section 1983. Will v. Michigan Department of State Police, 491 U.S. 58, 109 S.Ct. 2304, 2309, 2310 (1989). . . .

VI. **Defendant is entitled to Eleventh Amendment immunity**

As an agency of the State of Florida, the Defendant is immune from suit in federal court pursuant to the Eleventh Amendment. That the State and its agencies cannot be sued for damages in federal court is well settled. . . .

VII. **The Defendant is entitled to judicial immunity.**

It is well settled that judges have absolute immunity from liability for their judicial acts. Wahl v. McIver, 773 F.2d 1169, 1172 (11th Cir. 1985). This absolute immunity extends to those who perform functions closely associated with the judicial process as well. Oliva v. Heller, 839 F.2d 37 (2d Cir. 1988). It is also well settled that judges and government officials in judicial and quasi-judicial positions must not be subjected to inquiries concerning their thought processes. See United states v. Morgan, 313 U.S. 409, 422 (1941). . . .

VIII. **Plaintiff fails to state a claim for due process or equal protection**

violations

The Plaintiff claims that the suspension of his license to practice law violated his due process rights as well as his rights to equal protection under the law. The Plaintiff's complaint does not adequately state a cause of action for any of these constitutional violations and as such, must be dismissed.

Procedural Due Process

First, as to the due process claim, the Plaintiff appears to have received all of the process that was due to him. As the Supreme Court stated in Mathews v. Eldridge, 424 U.S. 319, 333, 47 L.Ed.2d 18, 96 S.Ct. 893, 903 (1976), the specific dictates of due process in a particular circumstance required consideration of three factors. That analysis defeats the Plaintiff's claim for the following reasons: (1) the private interest that will be affected by the official action; (2) the risk of an erroneous deprivation the procedures used, and the probable value of additional features; and (3) the government's interest, including the function involved and the additional burdens of additional procedures. . . .

At the outset, it should be noted that "[a] license to practice law confers no vested right to the holder thereof but is a continuing privilege . . ." R. Reg. Fla. Bar. 3-1.1 (2003). "The Supreme Court of Florida has the inherent power and duty to prescribe standards of conduct for lawyers, to

determine what constitutes grounds for discipline of lawyers, [and] to discipline for cause attorneys admitted to practice law in Florida . . . " R.Reg. Fla. Bar. 3-1.2 (2003). Investigations of complaints to the Florida Bar are refer to grievance committees, which are considered investigatory panels. R.Reg.Fla.Bar. 3-7.3(f); Fla. Bar v. Trazenfeld, 833 So.2d 734 (2002). When a grievance committee hearing is set, notice is sent t the respondent attorney, and he is provided with an opportunity to respond to the claims. R.Reg.Fla.Bar. At 3.7.4(a), (b). A grievance committee is required to consider all charges of misconduct whether based on a written complaint or not, and the proceedings of grievance committee hearings are not bound by the rules of evidence. Id. At 3.74(c), (d). Three members of the committee being in attendance is a quorum. Id. At 3.74(g). According to the allegations and descriptions of the grievance committee hearings in the Plaintiff's complaint, he was given notice of the hearings, he was given an opportunity to respond, there were at least three members of the committee present, and were within their authority to consider the testimony of witness Lina Serbin in evaluating the Jon Serbin complaint. Nothing in the Rules Regulating the Florida Bar requires the grievance committee to inform the responding attorney of the identity of all witnesses against him. The grievance

committee's role is investigatory, and their options are to recommend that probable cause does or does not exist to proceed with a formal complaint which is then referred to a disciplinary review committee and a designated reviewer. Id. At 3.7-4, 3-7.5. Their recommendations are not a final decision nor a suspension of his license. Thus nothing in the grievance committee's actions constitutes a due process violation.

The Plaintiff's allegations regarding the Referee's handling of the complaints against him do not identify any specific violations of his due process rights as he does not describe the hearings in detail. His only specific allegation is that once the Florida Supreme Court issued the order suspending his license to practice law, the order stated that the filing of a motion for rehearing would not alter the date of suspension, and that this violates due process. (Compl. ¶ 21). However, the order did not take effect for 30 days after the date of its entry, and stated that "the suspension shall not go into effect if Respondent satisfactorily complies with the subpoena within the 30 day period." . . . This provides more than adequate due process, where it gave him time to file both a motion for rehearing and to otherwise comply with the subpoena in order to avoid the consequences of the order. The Plaintiff was afforded all process he was due and therefore fails to state a claim for violation of his due process

rights.

Equal Protection

The Equal Protection Clause of the Fourteenth Amendment directs that no State shall "deny to any person within its jurisdiction equal protection of the laws." Oversight by the Courts is necessary when classifications impinge on personal rights protected by the Constitution. . . .

Plaintiff's complaint is insufficient to show how he was treated unequally in comparison to any other attorney facing disciplinary charges. While he claims that the suspension of his license without adequate time to file a motion for rehearing is a violation of his rights and compares it to being treated worse than a criminal defendant, the above due process analysis indicates that the order suspending his license was not immediate, and there are more than adequate pre-deprivation hearings and opportunities to challenge the proceedings prior to the loss of the license. As well, the loss faced by one who loses their license to practice law is not the same as the loss of liberty and freedom faced by a criminal defendant – thus the comparison of the two is flawed. Thus for this reason, this claim must also be dismissed. . . .

WHEREFORE, for all the reasons set forth above, Defendant respectfully requests that this Court enter an order dismissing the complaint and

for such other and further relief as the Court deems appropriate. . . .

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

DEBORAH L. NEVEILS
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Fla. Bar No. 0659509

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60231-CIV-COHN/SNOW

CALVIN DAVID FOX,
Plaintiff,

[EXCERPT]

v.

THE STATE OF FLORIDA,
Defendant.
_____/

VERIFIED RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO DISMISS

COMES NOW, the Plaintiff CALVIN DAVID FOX, and submits this Verified Response in Opposition to Defendant's Motion to Dismiss, to wit:

I.
DEFENDANT'S MOTION TO DISMISS

The Defendant, STATE OF FLORIDA (the STATE) does not want this matter to ever reach the merits. The STATE has presented a Rule 12(b) Motion to Dismiss the Plaintiff, CALVIN DAVID FOX's (hereinafter FOX) Verified Complaint. The State raises ten (10) complaints

that FOX's Verified Complaint should be dismissed because: 1.) FOX did not serve the State Attorney for Palm Beach County; 2.) That therefore the Court has not acquired ***in personam*** jurisiction; 3.) That this Court has no jurisdiction over the Verified Complaint, because of the so-called Rooker-Feldman doctrine; 4.) That the STATE and its agencies are not a proper parties to a 1983 complaint citing **Will v. Michigan Department of State Police**, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989); 5.) That FOX's Verified Complaint is barred by a four (4) year state statute of limitations for negligence claims and crimes or intentional torts; 6.) that the STATE and its agencies is entitled to Eleventh Amendment immunity from any claims herein; 7.) That the Florida Supreme Court and the Florida Bar have judicial immunity from any claims herein; 8.) That FOX has failed to state a claim for denial of procedural due process or equal protection; 9.) That FOX cannot prevail upon any issue herein to obtain a permanent injunction; and 10.) That FOX is precluded from obtaining attorney's fees at the conclusion of the Verified Complaint, because he prepared and filed the complaint.

THE VERIFIED COMPLAINT

The Verified Complaint on its face states that FOX seeks relief from this Court for

violations of **both** the federal and state constitutions; and **both** state law and Section 1983 of Title 42 United States Code.

The Verified Complaint was filed subsequent to the **interim** order of the Florida Supreme Court, sitting in its administrative/enforcement capacity. The Court's temporary form order was issued on Thanksgiving, **November 24, 1999**. Notwithstanding Rules 9.300(b) and 9.340(b) Florida Rules of Appellate procedure, the Court's order provides that because FOX is an attorney and not an AX MURDERER, his suspension is effective on **December 24, 1999**, Christmas Eve.

The Florida Supreme Court's denied FOX's Motions for Rehearing; Motion to Stay and Motion for In Camera Review on **February 22, 2000.** The Court's mandate was issued on **March 7, 2000**, fifteen (15) days after the Florida supreme Court denied rehearing. Fla.R.App.P. 9.340(b) and 9.300(b).

The Florida supreme Court's **interim** order suspends FOX's law license **temporarily** based upon a Referee's report, which was authorized by the Defendant, The Florida Bar's, Grievance Committee's charging document. The charging document was issued after an **ex parte** proceeding on **January 20, 1998**, where Fox had been given the right to appear and defend his license, but was not allowed to do so by

Defendants, Evans and Freshman.

FOX's Verified Response to the Grievance Committee charge was submitted on **March 12, 1998**. On **March 25, 1998**, Chief Justice Gerald Kogan on behalf of Defendant, The Florida Supreme Court issued its order to proceed to Defendants, Evans and Freshman upon the Florida Bar's charging document. Defendant, Siegel, ignored all of FOX's complaints and simply reported to the Florida Supreme Court that he should not be disqualified and that FOX had not complied with the Florida Bar's subpoena.

The Florida Supreme Court did not allow any appearance nor did it respond to any argument. Its November 24, 1999 order is its "**standard temporary order in attorney cases**" that the license of FOX to practice law is suspended **temporarily**, until the Defendant, The Florida bar, reports to the Court that there has been substantial compliance with the Florida bar's subpoena.

On **February 29, 2000**, the **same** Florida Bar Grievance Committee, without Defendants, Evans and Freshman participating, conducted a full evidentiary hearing at which FOX was allowed to appear and to defend his license. At the **February 29, 2000** hearing the Grievance Committee unanimously found **no probable cause** to believe or to proceed upon any claim that FOX had done anything unethical and the Jon

Serbin complaint was therefore rejected.

After repeated assurances that this matter would be remedied by the Florida bar, on five (5) occasions, **July 20, 1998; January 16, 2001; December 4, 2001; June 11, 2004;** and **April 15, 2004** FOX presented the facts and circumstances herein to Defendant, The Florida bar, its officials and to Anthony Boggs. **See, Exhibit A (Complaint to Florida Board of Governors and FLORIDA COMMISSION ON ETHICS).** The Defendants, Boggs and The Florida Bar chose to ignore the complaint herein and despite repeated assurances that this temporary order would be resolved, have not responded in any meaningful way to any of FOX's complaints for the past four years, but to assure FOX that this matter is being "looked into" **Id.**

SERVICE OF PROCESS IS SUFFICIENT

Assuming **arguendo** its application herein, Section 48.121 Florida Statutes, which the Assistant Attorney General only quoted **part** of to this Court, provides that service on the STATE is accomplished by serving the Assistant State Attorney for the circuit in which the action is commenced **and** by serving the Attorney General by certified mail.

However, the State Attorney has no authority for the State in this matter. This fact should be well known to the Assistant Attorney General, who made this argument. The

undersigned appeared in all state and federal matters under three (3) Attorney's General for more than nine (9) years representing the State and its officers and agencies. **E.G., Bloom v. McKnight**, 500 So.2d ___ (Fla. 1987), **reversing**, 490 SO.2d 1201 (Fla. 3d DCA 1986); **Abrams v. Reno**, 649 F.2d 342 (5th Cir. 1981). It is **well** settled that **only** the Attorney General is authorized to appear and is the designated representative for the STATE, its agencies and officers in all matters in federal court. Section 16.01(4) and (5) Fla. Stat.

The Assistant Attorney General admits service of process upon the Attorney General in this matter. The process that was served, is more superior than certified mail in enabling this Court to acquire jurisdiction. Such service is sufficient to confer jurisdiction upon this Court. There is no point, purpose nor disability in not having also served the State Attorney for Palm Beach County.

In any event, under state law, if service of process upon the State Attorney for Palm beach, is desirable this cause should merely be **abated** until process is made upon the State Attorney, who cannot appear in this cause and is not a party. **See, Cole v. Department of Corrections**, 840 So.2d 398, at 401 (Fla. 4th DCA 2003); **Cannon v. Yager**, 658 So.2d 591 (Fla. 2d DCA 1995); **Turner v. Gallagher**, 640 So.2d 120 (Fla. 5th DCA 1994).

Finally, the Defendant's claim of inadequate service is moot, where on June 14, 2004 the Plaintiff caused the State Attorney for Palm Beach County to be served herein.

ROOKER-FELDMAN IS NOT APPLICABLE

The doctrinal basis for the so-called "Rooker-Feldman" doctrine is predicated upon Title 28 Section 1257, which specifically provides that the United States Supreme Court has the sole authority to review **final** decisions by the State's highest **court**. **See, District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462, at 486, . . . (1982); "Symposium: The Rooker-Feldman Doctrine" 74 Notre Dame L.J. 1081, at 1082, n5. The claims asserted as duplicitous by the defendant must also be the same as those adjudicated by the state court; the Plaintiff must have had a full hearing and reasonable opportunity to litigate the claims; and the State court must have actually passed upon the claims for Rooker-Feldman to apply. **See, Rooker v. Fidelity Trust**, 263 U.S. 413, at 415 . . . (1923); [cites omitted].

Rooker-Feldman has no application, where the claimant does not assert injury from the state court final judicial action, but rather makes an independent claim that adverse, illicit or unconstitutional action harmed him, even if that allegation may affect the previous judicial

decision or deny a previously reached legal conclusion. [Cites omitted.]

Rooker-Feldman has no application to execute actions, including state administrative proceedings. **Verizon Maryland, Inc. v. Public Service Commission of Maryland**, 535 U.S. 635, at 643, n 3. . . (2002) ("the doctrine has no application to judicial review of executive action, including determinations made by a state administrative agency."); **District of Columbia Court v. Feldman**, **supra**, 103 S.Ct. 1317 . . .

Finally, federal constitutional claims are not "interchangeable" with state claims and are an independent basis to maintain an action. **See, Bivens v. Six Unknown Named Federal Agents**, 403 U.S. 388, at 398-411 . . . (1971) (Harlan, J. Concurring) [cites omitted]. . . . "The Rooker-Feldman Doctrine: Evaluating its Jurisdictional Status," Bandes, S, 74 Notre Dame L.Rev. 1175, at 1203 and n 134.

In the present circumstance, the **interim** order of the Florida Supreme Court on November 24, 1999 is neither a "**final**" nor a "**judicial**" act, which could have been **only** appealed to the United States Supreme Court. The decision herein by the Florida Supreme Court was not **final** and was therefore not reviewable by the United States Supreme Court.

The Florida Court was **not** sitting in a judicial capacity herein, but rather acted in its

administrative enforcement capacity upon the Defendants' complaints about an administrative subpoena. **See, Supreme Court of Virginia v. Consumers Union**, 446 U.S. 719, . . . (1980) (where court is acting in administrative capacity enforcing bar rules, it is not entitled to judicial immunity, because it is not acting in judicial capacity); **Forrester v. White**, 484 U.S. 219, . . . (1988) (a judicial officer's acts must be properly characterized in order to determine whether judicial immunity, is applicable; "judicial immunity is justified and defined by the functions it protects and serves, not by the person to whom it attaches") [cites omitted]. . . .

Furthermore, neither the Referee, nor the Grievance Committee made any reference to or adjudication of FOX's constitutional and legal claims asserted in this proceeding. FOX's claims were not part of the Court's consideration of the Referee's report and order on FOX's verified motion to vacate, which only stated that FOX had not complied with the Grievance subpoena and the Referee's view that he should not be disqualified. FOX was not provided with any reasonable opportunity to fairly litigate any of the issues raised herein. The Defendants were collectively only interested in enforcing the Grievance Committee's second subpoena. The Defendants did not care, nor did they ever respond in any way to any of FOX's repeated

concerns for due process, equal protection, attorney/client confidences, disqualification of the Referee, **ex parte** contact with the Referee or Linda Serbin, nor any other matter raised herein.

Under the plain import of the foregoing authority and the verified facts offered by FOX, the Rooker-Feldman claim should therefore be rejected. It is indeed, an irony in the context of this proceeding that the very next case printed after Rooker-Feldman is **Florida v. Royer**, 460 U.S. 491 . . . (1983), which the undersigned successfully argued for the STATE and the Assistant Attorney General was taught in law school.

ROOKER-FELDMAN SHOULD E ABANDONED

The invention of the Rooker-Feldman jurisdictional hurdle only confuses and obfuscates the proper consideration of well-settled doctrines of preclusion, collateral estoppel, abstention, comity and equitable restraint. **See**, 18 Charles Alan Wright, Arthur Miller & Edward Cooper, **Federal Practice and Procedure** Section 4469.1, at 657-658 (Supp. 2001); Thomas D. Rowe, "Rooker-Feldman: Worth Only the Power to Blow It Up?"; 74 Notre Dame L.Rev. 1081 (1999); Susan Bandes, 74 Notre Dame L.Rev. 1175.

The doctrine, which was fabricated from two decisions, sixty-five (65) years apart has

served only to confuse and mislead lower courts and is overly simplistic and frequently misapplied, leading to conflicting decisions upon the same facts. The predicate for the concept that the U.S. Supreme Court is the only available court to review illegal or unconstitutional misconduct is grossly outmoded and unfair, where the U.S. Supreme Court in the modern era only accepts one percent of the twenty thousand (20,000) applications for review, which it receives each year .

THERE IS NO SOVEREIGN IMMUNITY AGAINST STATE AND FEDERAL CONSTITUTIONAL CLAIMS IN FLORIDA

In a somewhat disguised argument, the STATE's complains that this cause should be dismissed in its entirety based upon the Eleventh Amendment to the U.S. Constitution as interpreted in **Will v. Michigan Department of State Police**, 491 U.S. 58, 105 S.Ct. 2304 (1989). The STATE's claim is that the STATE, its employees and agencies are not "persons" under sovereign immunity as interpreted in **Will v. Michigan**. The STATE's argument is misleading and is based upon an incomplete analysis of the **Will v. Michigan** ruling; and omits the Florida Supreme Court's express announcement under the Florida Constitution that the STATE does **not** have sovereign immunity against federal and state

constitutional claims.

The fundamental holding in **Will v. Michigan** is that states, their employees and agents have common law sovereign immunity against any 1983 claims under the Eleventh Amendment to the U.S. Constitution unless the state **waives** sovereign immunity:

> "The Eleventh Amendment bars [Section 1983] suits **unless the State has waived is immunity**." [Emphasis added].
>
> 109 S.Ct. At 2309-2310.

In supporting this conclusion, the Court also rejected a claim that state officials are "persons" under 1983, while acting in their official capacity. **Id.**, at 2312. The rationale employed by the Court was still that the Eleventh Amendment, unless waived, extended immunity to state officials acting in their official capacity because they would still be the STATE and immune from liability under sovereign immunity. **Id. Will v. Michigan** does not bar suits as in the present cause for injunctive and declarative relief and attorney's fees. 109 S.Ct. At 2312, n 10; **Alden v. Maine, ante,** 119 S.Ct. At 2240; **Supreme Court of Virginia v. Consumer's Union**, 446 U.S. 719, at 735-736, 100 S.Ct. 1967, 1976-1977, 64 L.Ed.2d 641 (1980) (court in its enforcement capacity is liable under 1983 for declaratory

judgment and injunctive relief and attorneys fees award); **Pulliam v. Allen**, 466 U.S. 522, at 541-542, 104 S.Ct. 1970, at 1981, 80 L.Ed.2d 565 (1984) ("judicial immunity is not a bar to prospective injunctive relief against a judicial officer acting in her judicial capacity."); **Ex Parte Young**, 209 U.S. 23, 28 L.Ed.2d 441, 52 L.Ed. 714 (1908).

However, in analyzing the STATE's claim for dismissal, it should be clear that there is no "eleventh Amendment Immunity." **E.G., Gamble v. Florida Department of Health**, 779 F.2d 1509, at 1519 (11th Cir. 1986) (erroneously referring to "**Eleventh Amendment immunity**"); **see, Alden v. Maine**, 527 U.S. 706, at 712-713, 119 S.Ct. 2240, at 2246, 144 L.Ed2d 636 (1999). In **Alden v. Maine** the Court succinctly explained that:

> "We have as a result sometimes referred to the States' immunity from suit as the '**Eleventh Amendment immunity**.' the phrase is convenient shorthand but something of a misnomer, for the sovereign immunity of the States neither derives from, nor is limited by the terms of the Eleventh Amendment. Rather, as the Constitution's structure, its history, and the authoritative interpretation by this

> Court make clear, the States' immunity from suit is a **fundamental aspect of the sovereignty** which the States enjoyed **before** the ratification of the Constitution . . ." [Emphasis added].
>
> 119 S.Ct. 2246-2247.

The STATE's claim for dismissal based upon immunity therefore derives solely from "**sovereign immunity**" as it has existed at the common law and whether it has been waived. **Alden v. Maine, supra; Will v. Michigan**, 109 S.Ct at 2310 (Congress did not intend to override immunities and defenses under the **common law**). The issued becomes, whether the STATE has retained "**sovereign immunity**" for claims of constitutional misconduct against the STATE and its agencies and employees.

This, in **Pan-Am Tobacco v. Department of Corrections,** 471 So.2d 4, at 5 (Fla. 1985) the Court rejected previous case law and announced that the State did not have sovereign immunity from suits for breach of contract. Similarly, in **Hill v. Department of Corrections**, 513 So.2d 129 (Fla. 1987), **disapproved, Howlett v. Rose**, 496 U.S. 356, 376, 110 S.Ct. 2430, 2443, 110 L.Ed.2d 2332 (1990), the Florida Supreme Court upon a certified question announced that Section 768.28 Florida Statutes die **not** waive sovereign immunity fo federal or state constitutional claims.

However, seven (7) years later in **Department of Revenue v. Kuhnlein**, 646 So.2d 721 (Fla. 1994) the Court changed its mind. In **Kuhnlein** the plaintiffs sought relief for denial of federal and state constitutional rights under Title 42 U.S. Code Section 1983 and prevailed upon 1983 claims in the trial court. In sustaining the trial court award of damages, the Florida Supreme Court specifically **rejected** the State's claim as presented herein, that it has sovereign immunity against 1983 claims and damage judgments. Chief Justice Kogan, writing for a unanimous Court explains clearly that **under Florida Constitutional law**:

> "Sovereign immunity does **not** exempt the State from a challenge based on violation of the **federal** or **state** constitutions, because any other rule self-evidently would make constitutional law **subservient** to the State's will. Moreover, neither the common law **nor a state statute** can supersede a provision of the federal or state constitutions." [Emphasis added].
>
> 646 So.2d at 721.

The foregoing announcement of state law in **Department of Revenue v. Kuhnlein**, was subsequently revisited by the Florida Supreme Court and reaffirmed in **Lane v. Chiles**, 698

So.2d 260, at263 (Fla. 1997); **see, also, Public Medical Assistance Trust Fund v. Hameroff, MD**, , 689 SO.2d 358, at 359 (Fla. 1st DCA 1997), and the United States Supreme Court **denied** review, 515 U.S. 1158, 115 S.Ct. 608, 132 L.Ed.2d 853 (1995). **Please note:** No further review of this matter is allowed under Rooker-Feldman.

The Florida Supreme Court couched its ruling upon the supremacy of the Florida constitution, which it emphasized cannot be overruled by any state statute. Any further attempt to modify the rule of law in **Kuhnlein** under state constitution can therefore only be made by an amendment to the State Constitution. It is certain that no attempt has been made to pur a provision in the State Constitution informing Florida citizens that they ahve no right to sue the STATE for illegal acts under the federal and state constitutions, because such an amendment would have not a snowballs's chance in Miami Beach of approval by the electorate.

More importantly to this Court's consideration herein, the foregoing holding by the STATE's highest court as to the status of the STATE's sovereign immunity is binding upon this Court under Rooker-Feldman. Thus, the basis for the STATE's motion to dismiss, that it has sovereign immunity herein does not exist under state law to any federal or state

constitutional claims.

The foregoing is particularly sound, where the essential justification for the sovereign immunity claim under the Eleventh Amendment was concern for state "coffers." **E.G., Alden v. Maine**, 119 S.Ct. At 2267, **citing, Scheuer v. Rhodes**, 416 U.S. 232, at 237-238, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); **Ford v. Department of Treasury of Indiana**, 323 U.S. 459, at 462, 65 S.Ct. 347, 89 L.Ed.2d 389 (1945); **see, also, Gamble v. Florida**, 779 F.2d 1509, at 1513 (11th Cir. 1986) (claim against state "coffers" underlying reason to apply sovereign immunity). In the present circumstance the Florida Legislature has provided insurance and indemnity for everyone in STATE employment specifically to insure the payment of damages and attorney's fees in federal or state civil rights actions. Sections 284.38; 111.07 and 111.071 Florida Statutes. The STATE coffers basis for allowing sovereign immunity therefore does not apply. The State "coffers" already pay for insurance for anyone sued in official or individual capacity and the "coffers" are therefore unaffected by the declaration that sovereign immunity does not apply herein.

DISMISSAL IS INAPPROPRIATE

Assuming **arguendo**, any application of **Will v. Michigan** herein any defect in the pleading of this cause may be readily remedied by

amendment. Even under **Will v. Michigan**, the STATE, its employees and agencies may be sued for injunctive and declaratory relief and attorney's fees. **Alden v. Maine; Pulliam v. Allen; Supreme Court of Virginia v. Consumer's Union; Ex Parte Young, supra; Huttoe v. Finney**, 437 U.S. 678, 98 S.Ct. 2565, 57 L.Ed.2d 522 (1978). The STATE is not off the hook upon these facts even if the Eleventh Amendment and sovereign immunity apply. **Id.** The uncontested verified facts supported by the verified allegations herein, which must be accepted as true, together with all reasonable inferences, constitute a facially actionable basis for claims against both the STATE, THE FLORIDA SUPREME COURT and THE FLORIDA BAR, **Id.**, and a basis for individual claims against EVANS, FRESHMAN, SEIGEL, SANKEL and BOGGS, **e.g., Alden v. Maine**, 119 S.Ct. At 2267 (suits against state officers individually for unconstitutional or wrongful conduct attributable to that officer are actionable under 1983); **Anderson v. Creighton**, 483 U.S. 635, at 638-639, 107 S.Ct. 3034, 3038, 97 L.Ed.2d 523 (1987) (government officials may be held personally liable for unlawful official action, which fails the objective test of reasonableness); **Monell v. Department of Social Services**, 436 U.S. 658, 691, 98 S.Ct. 2018, 2036, 56 L.Ed.2d 611 (1978) (persons may be sued under 19083 for

deprivations even though the deprivations were based upon governmental "custom" approved through the government's decision making channels); **Gray v. Poole**, 275 F.3d 1113, at 1116 (D.C. Cir. 2002) (government officials are not entitled to immunity, when their conduct violates statutory or constitutional rights, which a reasonable person would have known); **Jones v. Kirkland**, 696 SO.2d 1249, 1252 (Fla. 4th DCA 1997) (government official is not entitled to qualified immunity if the unlawfulness of his action is apparent).

STATUTE OF LIMITATIONS CLAIM IS WITHOUT MERIT ON ITS FACE

First of all, the Assistant Attorney General's complaint based upon a state stature of limitations and the Florida Supreme Court's interim order on November 24, 1999 is an affirmative defense and is inappropriate for a motion to dismiss, especially where the STATE has presented no facts or affidavits to support such a claim.

Secondly, the Florida Supreme Court's order is not final and only an **interim** order of temporary suspension, which was supposed to be adjusted and modified at any time by the FLORIDA BAR or the Florida Supreme and FOX was repeatedly assured that the November 24th order would be. **See, Exhibit A**. The claims of FOX herein have not met with any final date,

from which the time to proceed herein has accrued. **See, Exhibit A**; discussion above at pp. 4-5 and herein below.

There is no applicable statute of limitations for federal or state constitutional claims or for claims under Title 42 U.S. Code Section 1983 in this cause.

Moreover, if the STATE claims that the complaint herein is equivalent to a "**tort**" claim, the STATE has waived any liability for tort claims in Section 728.68 Florida Statutes.

Furthermore, the Florida Supreme Court's temporary, form order on November 24, 1999 is not the final seminal event upon which any statute of claims herein should commence. For example, the gross error underscored by the Court's November 24th opinion was substantially undermined and the cause herein greatly affected by the intervening decision of the same Grievance Committee on **February 29, 2000**, which found that there was in fact **no probable cause** to proceed upon the Serbin complaint.

Furthermore, there are six (6) levels at which the errors herein could have been promptly corrected or promises have been extended that they would be corrected; and as a consequence of which this matter is still not final: 1.) By Defendant Evans at the intake lefel; 2.) By Defendant FRESHMAN and the Grievance Committee; 3.) By Defendant SANKEL before a

decision by the Referee; 4.) By Defendant SIEGEL as the Referee; 5.) By the Defendant, Florida Supreme Court, by a proper and reasonable review of this cause; and 6.) by the Defendants, Boggs and the Florida bar, through their repeated promises of review and the Florida Board of Governors, which could have caused the Florida Bar to do its job at any time from January 16, 2001 up to and including **the present time**. **See, Exhibit A**.

In any event, assuming **arguendo** any application of state statutes regarding statutes of limitation for tort claims are applicable herein, under said statutes and assuming **arguendo** that if the Florida Supreme Court's decision on November 24, 1999 is an event upon which a statute of limitations may accrued, the tort claims herein did not accrue until the mandate of the Florida Supreme Court was issued on **March 8, 2004**. Fla.R.App.P. 9.300(b) and 9.340(b).

Upon the foregoing, the STATE's claim that the state statute of limitations expired herein in December of 1999 is without merit.

THERE IS NO JUDICIAL IMMUNITY HEREIN

As noted in the extensive discussion of sovereign immunity, the STATE, its employees and agencies do not have any sovereign immunity herein. **Department of Revenue v. Kuhnlein, supra**.

Additionally, as noted above the actions of the Florida Supreme Court and the Florida Bar, its officials and employees, were **not** judicial in nature and not subject to judicial immunity. **E.G., Supreme Court of Virginia v. Consumer's Union; Forrester v. White; Pulliam v. Allen, supra; Leclerc v. Webb**, 270 F.Supp. At 791-792.

Furthermore as noted above the State, its employees and agencies are **at the very least** liable herein for prospective injunctive and declaratory relief and the imposition of attorney's fees, when appropriate. **E.g., Virginia Supreme Court v. Consumer's Union; Allen v. Marine, supra**.

Finally, state officials, including the judiciary are individually liable herein for claims of unconstitutional conduct and misdeeds, irrespective of their employment as the STATE's employees. **E.g., Anderson v. Creighton; Monell v. Department of Social Services, supra**.

THE VERIFIED FACTS AND CIRCUMSTANCES DEMONSTRATE A PRIMA FACIA DENIAL OF DUE PROCESS AND EQUAL PROTECTION

The Assistant Attorney General makes the barren argument that FOX got all the process, which was due to him in this matter and therefore this matter should be dismissed. The STATE's

argument is in the nature of a motion for summary judgment, which is inappropriate and for which no predicate has been made herein.

First of all, FOX has been denied due process by the unreasonable delay and continued obstreperous failure of the STATE, its employees and agency to promptly commence the proceedings against FOX and to conclude the present temporary suspension, which now serves no public purpose. **See, United States v. Eight Thousand Eight Hundred Dollars**, 461 U.S. 555, 103 S.Ct. 2005, 76 L.Ed.2d 143 (1983); **Barry v. Barchi**, 443 U.S. 55, 99 S.Ct. 2642, 61 L.Ed.2d 365 (1979); **Mathews v. Eldridge**, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). This matter has been pending since 1996. First, the Defendants, EVANS and the Florida Bar failed to convene any hearing until EVANS had secretly harassed the client of FOX into making a complaint on June 6, 1998. The Defendant, Florida Bar, has now sat on the temporary order of suspension for more than four (4) years, even though there is no public purpose served by the continued temporary suspension of FOX and even the most harsh penalty for any technical violations would have long expired.

Secondly, the STATE makes no response EVANS attack upon FOX, irrespective of the Attorney Client Confidences raised by FOX and FOX's repeated desire to cooperate and provide

all records if LINDA SERBIN waived her attorney client privilege and she did not; and EVANS secretly harassing his only client in this matter, LINDA SERBIN, to make a complaint, where for almost two years she refused to do so. The STATE secretly trampling upon the Attorney/Client relationship and its utter disregard for the most sacred principle of our profession, the Attorney/Client Privilege is a violation of federal and state due process and worthy of this Court's consideration. **E.g. Swidler & Berlin v. United States**, 524 U.S. 399, 118 S.Ct. 2081, 141 L.Ed.2d 379 (1998) (the attorney client privilege is inherent to the due process under the Fifth Amendment, but is more broad and subpoenas for documents, which would violate the attorney client privilege should be quashed). The relevant analysis herein is identified to the U.S. Court decision quashing the subpoena in **Swidler & Berlin v. United States**. The same result should have obtained, but FOX's repeated good faith and well founded efforts to protect his client's attorney client confidences were unreasonably ignored and utterly **trampled** by EVANS; FRESHMAN; SANKEL; and SIEGEL. Ironically, Fox was aware and the Florida recommended that attorneys resist administrative subpoenas rather than compromise the attorney client relationship, **Florida Bar Ethical Opinion 92-5**.

Thirdly, the Defendants, THE FLORIDA SUPREME COURT and THE FLORIDA BAR, have institutional practices, which are an anathema to due process and equal protection. For example, 1.) When a Grievance Committee recommendation is sent to a Referee by the Florida Supreme Court, as in the case at bar, the Defendant, FLORIDA BAR, **secretly** causes its public relations package with Florida Bar suggested cases, Florida Bar suggested guidelines and implication that the Florida Bar and Florida Supreme Court will assist the Referee. This **ex parte** public relations package is not lawful in any other proceeding in Florida and its transmission and delivery is **concealed** from Respondent/Attorneys as in the case at bar. In all other areas of legal practice, **ex parte** contact with the trier of fact is an anathema and summarily forbidden. **E.g., Borjas v. Brescher**, 579 SO.2d 399 (Fla. 4th DCA 1991). In the present cause, the Florida Supreme Court and Referee ignored FOX's complaint of misconduct by the Florida bar and the Referee arising from the **ex parte** and **secret** delivery of the STATE's public relations package. **See, Exhibit A** (Cover article: the Florida Supreme Court is too close with the Florida Bar's Attorney Regulation Division).

2.) The November 24th order in this cause is a "standard order," which is prepared **ex parte**

for the Florida Supreme Court by the Florida bar in all cases against attorneys. Without any lawful basis, the order denies all attorneys the rights, which are afforded any other litigants in Florida: the procedural benefit of the Florida Appellate Rules 9.300(b) and 9.340(b);

3.) The Defendant, FLORIDA BAR, claims that it is an "arm of the Florida Supreme Court." The effect of the lack of separation between the Florida Supreme Court and the Florida Bar, is to deny the fundamental right to full consideration, due process and review of all lawyers like FOX, in perhaps the most important case in any lawyer's career, which full and impartial consideration, due process and review, is otherwise afforded to all other litigants and AX MURDERERS in every other case before the Court as a matter of fundamental due process right in Florida's constitution and under the federal constitution. **See, Exhibit A** (Cover article on Florida Commission on Ethics); and

4.) Similarly, in the face of said "right arm" relationship of the Florida bar to the Florida Supreme Court and the lack of full review and attention to said cases, Referees like Defendant, Siegel, as in the present cause are repeatedly allowed to sit in causes as in the present case, where they each have **prima facia** grounds for conflict and disqualification. As in the case at bar, the Florida Supreme Court and the Florida

bar pay no effort nor attention to these corrupted triers of fact, unlike the close scrutiny and prompt appellate review afforded in all other cases and with all other litigants before the Florida Supreme Court. **E.g., McKenzie v. Superkids**, 565 So.2d 1332 (Fla. 1990).

Furthermore, the STATE has not closely examined the due process and equal protection claims of FOX herein. For example, the STATE makes a bare allegation that the Grievance Committee gave FOX a right to appear at the January 20, 1998 hearing and "**[FOX] was given an opportunity to respond.**" As clearly explained in the complaint, FRESHMAN and EVANS denied FOX his right, which was created by the Grievance Committee demand to appear and to defend the taking of his license.

Further, the STATE pretends in its response that the Grievance Committee proceeding is not important to the process of suspending FOX's license and thereby does not constitute a due process violation. On the contrary, the Grievance Committee is the cornerstone, which initiates the charging document in the attorney disciplinary process. Without a Grievance Committee charging document, there would have been in this cause and there is no further prosecution of Bar matters. In fact, in this matter, the Grievance Committee was never interested in compliance with its

subpoena, which had been repeatedly issued herein and had complete discretion to disregard it. As reflected in the February 29, 2000 hearing and throughout the transcript of the January 20, 1998 hearing the Grievance Committee was **only** interested in the Serbin matter and made no mention or questions at any time as to the status or compliance with the EVANS/FRESHMAN subpoena. It had no cause, nor has there ever been any complaint to warrant the punitive subpoena cooked up by EVANS/FRESHMAN. Furthermore, under the **Mabie v. Garden Street Management**, 397 SO. 920 (Fla. 1981) and its related decision, the refusal of two previous Grievance Committees to proceed was dispositive herein and EVANS/FRESHMAN action in pursuing this matter after two years before yet another Grievance Committee was a reckless denial of due process.

This cause is much like the circumstance in **Cleveland Board of Education v. Loudermill**, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). In **Loudermill** the plaintiff had been summarily terminated from his job, without allowing him to respond. In reversing, the U.S. Supreme Court first noted that the taking of the plaintiff's means of livelihood without fundamental due process was **manifestly unlawful**. **Loudermill** at 1493. The Court further explained that the rights infringed upon in

denying the right to appear and defend at a hearing, were fundamental federal due process rights:

> "In Vitek v. Jones, 445 U.S. 480, 100 S.Ct. 1254, 63 L.Ed.2d 552 (1980) we pointed out that minimum procedural requirements are a matter of federal law, they are not diminished by the fact that the State may have specified its own procedures that it may deem adequate for determining the preconditions for official action."
>
> 105 S.Ct. at 1492.

The Court in **Loudermill** further explained that the right to due process is guaranteed by the Constitution and not by the **process** for the deprivation of Life, Liberty or property rights. 105 S.Ct. at 1493. In affirming the constitutional requirement of a hearing, which had been ordered by the courts below, the **Loudermill** court explained that:

> "An essential principal of due process is that a deprivation of life, liberty or property be preceded by notice and **opportunity** for hearing appropriate to the nature of the case. We have described the root requirement of the Due Process clause as being that an individual be

> given an opportunity for a hearing before he is deprived of any significant property interest." [Citations omitted; emphasis added].
>
> 105 S.Ct. at 1493.

The Court therefore held that the right to work, like the license of FOX in the present cause, once conferred is a vested property right, which may not be taken without a showing of misconduct and a **meaningful** opportunity to a hearing; and in the absence of these elements, the taking of the right is a denial of **fundamental due process**, to wit:

> "The essential requirements of due process . . . are notice and an opportunity to respond. The opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a **fundamental due process requirement**." [Citation omitted; emphasis added].

In the present cause the record is replete with the reckless disregard by the Defendants, STATE, EVANS, FRESHMAN, SANKEL, SEIGEL, and BOGGS of the Plaintiff's right to a hearing and to defend against the taking of his license, which was demonstrated as frivolous at the hearing by the same Grievance Committee on February 29, 2000, when FOX was allowed to appear and to

defend against the taking of his license.

The importance of the Grievance Committee hearing on January 20, 1998 **cannot be gainsaid**. This Court must appreciate herein is that, as reflected by the comments of attorney Berman (**Exhibit A** p. 2 and 10), at the most the STATE may have had a technical violation for the failure to comply with the Grievance Committee subpoena. However, at the hearing on January 20, 1998 FOX had the right to try to convince the Grievance Committee to overlook his non-compliance with the subpoena; and the Grievance Committee had complete discretion to disregard the failure to comply with its own subpoena. **Compare, Cleveland v. Loudermill**, 470 U.S. 543-544, 105 S.Ct. At 1494, (with a hearing the ability of the examiner to exercise its discretion and for the plaintiff to convince the examiner to not discharge the plaintiff was precluded).

In **Schware v. Board of Bar Examiners**, 353 U.S. 232, 77 S.Ct. 752, ___ L.Ed.2d _____ (1957), the plaintiff complained that he had been subjected to unfair, unreasonable procedure in violation of the due process clause. Relevant to the case at bar, in sustaining the complaint of the denial of due process, Justice Harlan described the parameters of such a denial of due process, thus:

> "But judicial action, even in an individual case, may have been

> abased on avowed considerations that are inadmissible in that they violate the requirements of Due Process. Refusal to allow a man to qualify himself for the profession on a wholly arbitrary standard or on a consideration that offends the dictates of reason offends the Due process Clause."
>
> 77 S.Ct. at 761.

Such is the case here. The taking of the livelihood of FOX has been through procedures and process, which are arbitrary and offend reason. The customs, rules and practices employed by the STATE herein are an anathema to the rights of all attorneys to due process in the disciplinary process. The STATE's claim to the contrary should be summarily rejected by the Court. . . .

WHEREFORE, upon the foregoing, the Plaintiff CALVIN DAVID FOX, prays that the Court will enter its order denying the Defendant's Motion to Dismiss and allowing the Plaintiff to exercise his right to amend the complaint.

CALVIN DAVID FOX
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-60231-CIV-COHN/SNOW

CALVIN DAVID FOX,
Plaintiff,

[EXCERPT]

v.

THE STATE OF FLORIDA,
Defendant.
_____/

MOTION TO DISMISS AND SUPPORTING MEMORANDUM OF LAW

John F. Harkness ("Harkness"), pursuant to Rule 12(b)(1), (2), (5), and (6), of the Federal Rules of Civil Procedure, moves this Court for entry of an Order dismissing this action with prejudice and in support thereof states as follows:

1. On or about July 15, 2004, Harkness was served with a summons in the above-styled cause.

2. Accepting the allegations within the four corners of the complaint as true, this Court lacks subject matter jurisdiction and Plaintiff can prove no set of facts entitling him to relief as more fully

discussed in the Memorandum of Law below. . . .

IV. THIS ACTION IS BARRED BY THE ROOKER-FELDMAN DOCTRINE

Federal district courts lack jurisdiction to review, reverse or otherwise invalidate a final state court decision. See *Dale v. Moore,* 121 F.3d 624, 626 (11th Cir. 1997), relying on *District of Columbia Court of Appeals v. Feldman*, 460 U.S. at 476 and *Rooker v. Fidelity Trust Co.,* 263 U.S. at 416. Despite this prohibition, Fox's Complaint is a bald face attempt to challenge collaterally the judgment and actions of the Florida Supreme Court, and its agents. Consequently this Court lacks subject matter jurisdiction pursuant to the Rooker-Feldman doctrine. See *Solomon v. Supreme Court of Florida*, 2003 WL 1873939 at 1 (D.C. Cir. 2003); *Dale* at 626; and *Tindall* at 4-5.

Under the Rooker-Feldman doctrine, authority to review the final decisions from the highest court of the state is reserved to the U.S. Supreme Court. Thus, federal district courts "may not exercise jurisdiction to decide federal issues which are inextricably intertwined with a state court's judgment." See *Dale* at 626, and citations contained therein. The controlling inquiry is whether claims presented to the district court are inextricably intertwined with the claims decided by a state court. *Id.* The specific federal

claims raised in a district court action need not have been raised in the state judicial proceeding to be barred by the Rooker-Feldman doctrine. See *Tindall* at 5, relying on *Feldman.*

Dale, Solomon and *Tindall* all concerned attempts to collaterally challenge final action taken by the Florida Supreme Court or its agents in relation to the Florida Supreme Court's regulation and discipline of persons seeking admission or already admitted to the Florida Bar. All three courts found that the Rooker-Feldman doctrine stood as a jurisdictional bar.

The *Tindall and Solomon* decisions are particularly persuasive; both involved challenges arising out of disciplinary action taken by the Florida supreme Court pursuant to its constitutional authority and mandate. As in *Tindall and Solomon*, Fox is asking this Court to review the Florida Supreme Court's judgment to discipline him. To grant Fox's requested relief this Court would have to vacate or otherwise reverse the action taken by the Florida Supreme Court. It is this precise action that the Rooker-Feldman doctrine prohibits.

Accordingly, dismissal of the Complaint with prejudice is warranted for lack of subject matter jurisdiction. . . .

VII. THIS COURT MUST ABSTAIN FROM REVIEWING DISCIPLINARY

PROCEEDINGS CURRENTLY BEFORE THE FLORIDA SUPREME COURT.

As noted in Part II above, the Florida bar is an official arm of the Florida Supreme Court, one of three co-equal branches of government. The Constitution of the State of Florida has granted the Florida Supreme Court exclusive jurisdiction over the regulation and discipline of persons admitted and seeking admission to The Florida Bar. The Florida Supreme Court delegated this authority over lawyers to The Florida Bar. See citations to authorities in Part II. See also *Ippolito* 824 F.Supp 1562, for a scholarly analysis and discussion on the history of The Florida Bar, the need for professional regulation and the independent judiciary.

Fox's Complaint seeks relief from current proceedings against him. This request is contrary to the *Younger* abstention doctrine. Pursuant to this doctrine, outlined in *Younger v. Harris*, 401 U.S. 37 (1971), this Court should abstain from considering any current proceedings against Fox by the Florida Supreme Court. . . .

WHEREFORE, Harkness seeks an Order form this Court dismissing the Complaint with prejudice for lack of subject matter jurisdiction, or such other relief that this Court deems just and proper.

Dated: August 4th, 2004.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-60231-CIV-COHN/SNOW

CALVIN DAVID FOX,
Plaintiff,

[EXCERPT]

v.

THE STATE OF FLORIDA,
Defendant.
_____/

RESPONSE IN OPPOSITION
HARKNESS' MOTION TO DISMISS

COMES NOW, the Plaintiff, CALVIN DAVID FOX, and submits this Response in Opposition to Harkness' Motion to Dismiss, to wit:

1.) That the Plaintiff is in receipt of a Motion to Dismiss and Memorandum submitted by John F. Harkness, individually, in response to the Verified Complaint.

2.) That as reflected on the face of the summons and the return filed by the process server, HARKNESS was served with a "**corporate**" summons upon HARKNESS as "Executive Director of the Florida Bar."

3.) That HARKNESS is not named nor suggested as an individual Defendant anywhere in the Verified Complaint.

4.) That the Florida Bar is named as a Defendant in the Verified Complaint.

5.) That because no "responsive pleading" has been filed herein on August 13, 2004 as is his right, the plaintiff caused First Amended Verified Complaint to be filed herein, which has been served upon Harkness as Executive Director of the Florida Bar.

6.) that HARKNESS is not named nor suggested anywhere in the First Amended Verified Complaint as a Defendant.

7.) That the Florida Bar is named as a Defendant in the First Amended Verified Complaint.

8.) That Harkness' appearance in this cause individually is either a gross miscalculation by counsel, which could have been easily avoided and clarified by a telephone call or is designed solely to harass and delay these proceedings.

9.) That the Plaintiff would request that this Court head off any such lack of cooperation and communication by defense counsel, which may be predicated solely upon the nature of this complaint.

10.) That Harkness appearance individually in this cause upon the foregoing circumstances if **frivolous**.

11.) That the HARKNESS appearance and motion to dismiss should be **stricken**.

12.) That the Florida Bar should respond to the First Amended Verified Complaint.

13.) That the arguments made and the personal vilification of the Plaintiff by HARKNESS counsel are the same as presented by the Assistant Attorney General.

14.) That out of an abundance of caution, the Plaintiff adopts and reiterates in this response, his Verified Response in Opposition to Defendant's Motion to Dismiss," which was previously filed in this cause on July 16, 2004 and which has been provided herewith to HARKNESS.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Plaintiff, CALVIN DAVID FOX, prays that this Court will strike and/or deny the Motion to Dismiss filed by HARKNESS individually and require that the Defendants proceed upon the First Amended Verified Complaint.

CALVIN DAVID FOX

. . .

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Response in

Opposition to HARKNESS' Motion to ismiss was caused to be served by first class mail postage prepaid on this 17th day of August 2004 upon Deborah L. Neveils, Assistant Attorney General, Suite 900, 1515 North Flagler Avenue, West Palm Beach, Florida 33401 and upon Barry Richard, Esq., 101 East College Avenue, Tallahassee, Florida 32301, together with the Plaintiff's Verified Response in Opposition to Defendant's Motion to Dismiss.

CALVIN DAVID FOX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 03-60231-CIV-COHN/SNOW

CALVIN DAVID FOX,
Plaintiff,

[EXCERPT]

v.

THE STATE OF FLORIDA, et.al.,
Defendant.
_____/

FIRST AMENDED VERIFIED COMPLAINT

COMES NOW, the Plaintiff, CALVIN DAVID FOX, and pursuant to Sections 2 and 9 of the Florida Constitution and Amendments V and IV and Section 1 of the United States Constitution and Section 1983 of Title 42 U.S. Code and Section 768.28 Florida Statutes and sues THE STATE OF FLORIDA; THE FLORIDA SUPREME COURT in its administrative capacity; THE FLORIDA BAR, an administrative agency of the State of Florida; JOHN ANTHONY BOGGS, individually and as Director of Lawyer Regulation for the Florida Bar; ELENA EVANS, individually and as Assistant Staff Counsel of the Florida Bar; LAWRENCE FRESHMAN,

individually and as Chairman of Florida Bar Grievance Committee 11I; THOMAS KARR, individually and as Vice Chairman of Florida Bar Grievance Committee 11I; ARLENE K. SANKEL, individually and as Chief Branch Disciplinary Counsel of the Miami office of the Florida bar; and PAUL SIEGEL, individually and as Referee for the Florida Bar and as grounds therefore shows: . . .

21.) Ms. Evans and former Grievance Committee Chairman Lawrence Freshman, disregarded the *Federal State Administrative Conflict Order* and Mr. Fox's inability to appear and defend against the taking of his license and ignored all of Mr. Fox's previous Motions for protective Order claiming Attorney/Client privilege and requesting that the information be presented in camera.

21a.) That on January 6, 1998 in order to justify the FLORIDA BAR's January 20, 1998 proceeding against Mr. Fox, which Mr. Fox contended was without Linda Serbins' agreement, EVANS produced a typewritten letter, which was generated by JON SERBIN and purported to agree with JON SERBIN's complaint, but instead contained the **forged** signature of LINDA SERBIN and Linda directly refuted said letter.

21b.) That in the hearing transcript on January 20th it was **undisputed** that Mr. Fox was

in a federal arbitration trial in Seattle, Washington and could not attend and defend the proceedings against the taking of his license.

21c.) That the only matter noticed for hearing on January 20, 1998 was "**the Complaint of Jon Serbin**."

21d.) That at the hearing on January 20, 1998, the Grievance Committee proceeded with EVANS; and only three (3) of eleven (11) voting members: Chairman FRESHMAN; Vice Chairman CARR and ALLIE MOBLEY, a civilian member of the Grievance Committee.

21e.) That at the hearing on January 20, 1998, the only matter presented and discussed on the record was the complaint of Jon Serbin.

21f.) Without notice to Mr. Fox and without his knowledge up to and including **June 10, 1998**; and despite her repeated previous assurances to him and denial that she had appeared at all, Linda Serbin was apparently unsworn on the telephone during said **January 20, 1998** hearing.

21g.) That on the record neither FRESHMAN nor EVANS presented or mentioned Mr. Fox's Motion and letter requesting a thirty day delay until he was able to return from trial in Seattle and Mr. Fox's Motions for protective Order addressing the two subpoenas nor that this matter had apparently already been addressed by two (2) other Grievan

Committees, which each had declined to proceed.

21g.) That while off the record, the Grievance Committee apparently declined to proceed upon Jon Serbin's Complaint, but instead, without Mr. Fox's Motions for a protective order and ignoring Mr. Fox's good faith letter and Motion to reset the proceeding thirty days so that he could appear and defend his license.

22.) That there was gross delay by Elena Evans and the Florida bar upon the Jon Serbin complaint between September 1996 and the January 20, 1998 hearing.

22a.) That the reason for this delay, was Mr. Fox's consistent response that Jon Serbin was **not** his client and that Linda Serbin had uniformly refused to make any complaint and did not want to make any complaint.

22b.) That the Grievance Committee on January 20, 1998 refused and failed to proceed, because Jon Serbin was not Mr. Fox's client.

22c.) That as a consequence and **without Mr. Fox's knowledge or permission** and without explaining her rights, for almost two (2) years EVANS and her agents employed by the Florida bar constantly harassed Mr. Fox's client, Linda Serbin, to make a complaint against Mr. Fox, which she consistently refused to do.

22d.) That after almost two years of being harassed and worn down by EVANS and her

agents employed by the Florida Bar, Linda Serbin reluctantly appeared unsworn on the telephone.

22e.) That Linda Serbin appearing unsworn on the telephone is not competent evidence of anything.

23.) That Linda Serbin did not make any verified statement until **June 6, 1998**, half way through the appeal proceedings from said **January 20, 1998** hearing as noted below.

THE APPEAL ON THE 1998 EX PARTE PROCEEDING

24.) That based upon the January 20, 1998 Grievance Proceeding, FRESHMAN and EVANS caused a Notice of Non-Compliance with Grievance Committee 11I September 1997 Subpoena and made no mention of Mr. Fox's Motions fo Protective Order nor Mr. Fox's Letter and Motion to Continue the January 20, 1998 proceeding until Mr. Fox could appear and defend against the taking of his license.

24a.) That Mr. Fox filed an extensive **Verified** response and objections to the Notice of Non-Compliance, with complete record exhibits, in which he asserted **inter alia** a.) that Jon Serbin was not his client and his motions for protective orders had not been considered; b.) that the proceedings had been ex parte and contrary to settle conflict orders; c.) that Jon Serbin had

forged Linda Serbin's signature upon a complaint letter just before the January 20th hearing and Linda Serbin had not and did not want to make any complaint; d.) that FRESHMAN was incompetent and dishonest in disregarding Mr. Fox's letter and Motion for a continuance and in refusing to continue the proceeding; and e.) that FRESHMAN may have had a conflict of interest arising from a previous personal altercation with Mr. Fox. A64-A77.

24b.) That Mr. Fox concluded his objections to the Notice of Non-compliance, thus:

> "In the present circumstances, the BAR and FRESHMAN should not be allowed to engage in a witch hunt, rummaging through the life of [Mr. Fox] and destroying his client relationships, based solely upon the complaint of Jon Serbin, who is an alcoholic and psychotic; who admits that he has no right to claim any funds from the forced sale of [Linda Sergin's] home; who has committed unspeakable acts against the clients of [Mr. Fox], who have not made any complaints and [Linda Serbin] has told the Bar that she doesn't wish to proceed and has declined to appear or cooperate with the Bar.
>
> * * *
>
> **[A]T a minimum** as reflected on the face

of the record of the Grievance Committee reviews it is wholly apparent on the Record that there is a legitimate controversy herein requiring **at least** due process and a hearing."

A75-A76.

25.) However, the Florida Supreme Court is buried with fully one third of its case load involved in attorney discipline matters and on March 25, 1998 merely shuffled the Grievance Committee Notice of Non Compliance to Defendant, SIEGEL. A78.

SEIGEL DOESN'T CARE WHAT HAPPENED AT GRIEVANCE COMMITTEE

26.) Defendant Siegel announced on June 10, 1998 that the Grievance Committee proceedings were no longer relevant and he did not care what happened before the Grievance Committee and their disregard of Mr. Fox's Motions for Protective orders or that the Grievance Committee had proceeded ex parte, without allowing Mr. Fox any opportunity to defend against the taking of his license. A99; A103; A110.

LINDA SERBIN SIGNATURE FORGED

27.) That Defendant, SIEGEL, was

repeatedly informed, but ignored that the Defendant, EVANS and FRESHMEN used a complaint document, upon which the signature of Linda Serbin was forged. A98; A100; A107.

SIEGEL REFUSES TO DISQUALIFY HIMSELF

28.) That Mr. Fox filed his Motion to Disqualify alleging inter alia, that SIEGEL and Mr. Fox competed for the same judicial position; had the same girlfriend; each made derogatory remarks about the other; and that Mr. Fox had filed a petition with the Governor of Florida and the Florida Supreme Court to block Defendant SIEGEL's appointment to the judicial position, which SIEGEL presently held. A194-A197.

28a.) That Defendant, SIEGEL, failed and refused to disqualify himself, upon well-known facts, which manifested a plain conflict of interest and a manifest appearance of impropriety for Defendant SIEGEL to proceed in this cause. A194-A198.

DEFENDANT'S EX PARTE CONTACT WITH TRIER OF FACT

29.) That Defendants, THE FLORIDA BAR, EVANS and SANKEL engaged in **ex parte** contact with Defendant SIEGEL, by **surreptiously** providing documents, which are

entitled, "**Referee Manual**" and "**Florida Standards for Imposing Discipline,**" neither of which are provided to Respondent attorneys and were not provided to Mr. Fox in the case at bar.

29a.) That said ex parte documents are **not** just a recitation of the necessary or applicable rules, but instead are the Defendant, FLORIDA BAR and its agents EVANS and SANKEL, ex parte commentary and opinion as to what the Defendant, SIEGEL, should consider in determining the rights of Mr. Fox and other similarly situated Respondents and in considering the issues referred to the Defendant SIEGEL.

30.) That said **ex parte** documents containing the opinions and commentary of the Defendants amounts to no more than public relations material by a rival law firm to the trier of fact, which is **patently** unlawful, without regard to its content. **E.g., Rose v. State**, 601 So.2d 1181, at 1183 (Fla. 1992); **Borjas v. Brescher**, 579 So.2d 399 (Fla. 4th DCA 1991).

31.) That on June 6, 1998, Linda Serbin finally relented to the harassment by the Defendants, FLORIDA BAR; EVANS and SANKEL, while this matter was proceeding before the Defendant, SIEGEL, made a pro forma written complaint adopting the complaint of Jon Serbin.

32.) That as a consequence of the announcement during a hearing before Defendant,

SIEGEL, on June 10, 1998 by Defendant, SANKEL A104, Mr. Fox made an effort to settle with Gregg Wenzel. **See**, A131-A141. However the settlement was overruled when Wenzel's supervisor, Defendant, SANKEL, refused to cooperate upon the terms Wenzel had agreed to. **Id.**

33.) That even though Defendant SIEGEL specifically stated he would not enter an order recommending automatic suspension (A126-A127), on September 4, 1998 Defendant, SIEGEL, signed an order prepared by Defendant, SANKEL, which recommended automatic suspension of Mr. Fox without regard to any of the foregoing misconduct and circumstances. A129-A130.

NO MEANINGFUL OR FAIR REVIEW

34.) On **November 24, 1999**, Thanksgiving, without allowing oral argument, DEFENDANT, Florida Supreme Curt, ignored all of the foregoing misconduct and manifest denial of due process and rubber stamped the rubber stamp by Referee Siegel of the 1998 ex parte Grievance Committee hearing and ordered that Mr. Fox's license should be **temporarily** suspended until he complied with the second punitive subpoena, issued by EVANS and FRESHMAN. A3-A4.

34a.) That the Florida Supreme Court's

order provides that the Florida Bar may file a Notice of Compliance to undo the Court's order of temporary suspension. A4.

35.) That in particular, the Florida Supreme Court's order, which was prepared by the Defendant, FLORIDA BAR, denies Mr. Fox and all other Respondent attorneys, the benefit of Rules 9.300(b) and 9.340(b), which specifically allow a stay of any order until a motion for rehearing is considered and decided, but instead states, "**the filing of a motion for rehearing shall not alter the effective date of this suspension.**" [Emphasis supplied.]

36.) That on **February 22, 2000**, the Florida Supreme Court denied Mr. Fox's Motion for Rehearing; Supplement to Motion for Rehearing; Motion for In Camera Review; and Motion for a stay Pending Review. A179.

37.) That on **October 2, 2000**, the United States Supreme Court denied certiorari without comment. The Court's denial of review has no precedential value. The Court denied review **at this point**, because the Florida Supreme Court's order is only a temporary suspension.

2000 GRIEVANCE FINDING OF NO PROBABLE CAUSE

38.) Subsequent to the January 20, 1998 Grievance Committee hearing, Defendant, EVANS, left the offices of the Florida Bar.

39.) That on **February 29, 2000**, the Florida Bar through its new counsel, Wenzel, scheduled a hearing **before the same 11th Circuit Grievance Committee** upon the complaint of Jon Serbin as adopted by the Linda Serbin. A180-A181.

40.) At said hearing, Linda appeared for the first time and for the first time Mr. Fox was allowed to appear and to defend his license. For the first time, Mr. Fox was allowed to produce the November 23, 1992 agreement with Linda Serbin. A182-A189. It was demonstrated that Jon Serbin's complaint was **frivolous**. All Serbin records were produced to the satisfaction of the Grievance Committee.

41.) That on **March 14, 2000**, the Grievance Committee issued its **unanimous** finding of no probable cause and in a later letter to the Serbins recited:

> "You are advised that [the Complaint against Calvin D. Fox] has been investigated and considered by this committee. It is our decision that there is insufficient evidence to support finding probable cause to believe that a violation of professional ethics has occurred which warrants the imposition of discipline because: there is insufficient evidence to support your allegation that [Calvin D. Fox] improperly disbursed funds from his

trust account."

A189.

42.) That on July 20, 1998, Mr. Fox forwarded to Defendant, Boggs, a substantial narrative of the foegoing circumstances and misconduct, with no response from Defendant BOGGS or the FLORIDA BAR. A80-A93.

43.) That on January 16, 2001 after Mr. Fox complained to President Elect Todd Aronovitz of the Florida Bar, Mr. Aronovitz met with Defendant, BOGGS, ho assured Mr. Aronovitz that these circumstances would be looked into, but BOGGS has never responded.

44.) That on December 4, 2001, Mr. Fox again wrote Defendant, BOGGS, and reminded him of his agreement with Mr. Aronovitz, but BOGGS has never responded.

45.) That on June 11, 2003 after receiving my complaint that BOGGS and THE FLORIDA BAR has failed to respond in this matter Aronovitz again referred this matter to BOGGS for resolution, but BOGGS has never responded.

46.) That on April 28, 2004, in response to Mr. Fox's April 15, 2004 complaint to the Florida Commission on Lawyer Regulation, BOGGS wrote to Mr. Fox that he thought "others" at the Florida Bar were in communication with Mr. Fox and that he just does **not** know what relief Mr. Fox wants or what he wants the Florida Bar to do.

47.) That as reflected herein and in the attached record, Mr. Fox has been complaining of the denial of his right to due process and has sought to uphold his oath to maintain the attorney/client privilege under State and Federal law to the Florida Bar since 1997.

48.) That no action could be maintained against Mr. Fox and his law license herein without the "charging document" recited herein, which was generated by the GRIEVANCE COMMITTEE by through Defendant BOGGS, direct or tacit approval of the misconduct and failure of Defendants EVANS, FRESHMAN and KARR, herein.

49.) That the Florida Bar claims that it is, "**an arm of the Florida Supreme Court**" and this justifies the complete lack of separation and failure to supervise between the Florida supreme Court and the Florida Bar and its employees.

50.) That as of the date of this complaint none of the Defendants, did anything to remedy the circumstances herein, but instead SANKEL has expressed the right of THE FLORIDA BAR to exercise the opportunity to permanently remove Mr. Fox from the Florida bar four (4) years from the date the temporary suspension order of the Florida Supreme Court was final.

IV.

COMMON ALLEGATIONS AS TO INDIVIDUAL DEFENDANTS; DENIAL OF DUE PROCESS AND EQUAL PROTECTION

51.) That the foregoing paragraphs numbered 1 to 50 and 75, 76 and 77 are re-alleged herein verbatim.

52.) That with BOGGS' and SANKEL's knowledge and tacit or express approval the commencement and prosecution of an action against Mr. Fox's law license by EVANS, FRESHMAN, KARR and SIEGEL and the continued suspension of his license has been **manifestly unjust** as demonstrated by the finding of no probable cause on **February 29, 2000**.

53.) But for Elena Evans' unlawful harassment and contact with his client and the Defendants, EVANS, FRESHMAN, KARR and SIEGEL complete disregard for her confidences and his due process rights, this matter would have been concluded and closed with the same result as it did upon the hearing of February 29, 2000.

54.) In the face of Jon Serbin's complaint, at the risk of his livelihood and license, Mr. Fox sought to protect his client against the disclosure of her most closely held confidences as required by his oath as a lawyer.

55.) If Mr. Fox had been allowed a modicum of due process by EVANS, FRESHMAN, KARR and SIEGEL and if there

was any respect by these Defendants for his client's attorney/client confidences, this matter would have been concluded as apparently three (3) other Grievance Committees in 1996, 1997 and 2000 decided that it should be.

56.) Mr. Fox's concern for his client's confidences from 1996 to June 6, 1999 were quite legitimate. In **Doe v. The Supreme Court of Florida**, 734 F.Supp. 981, at 988 (S.D. Fla. 1990), the Florida Bar's confidentiality rule was struck down. Therefore, between 1996 and June of 1999, Jon Serbin and state and federal prosecutors would have been free to use the enclosed contract between Mr. Fox and Linda Serbin to proceed against Ms. Serbin. If Mr. Fox had disclosed her confidentialities in 1996, without her waiver of her right of confidentiality, Ms. Serbin would **then** have had a legitimate complaint against Mr. Fox.

57.) Ms. Serbin did not waive her attorney client confidentiality until **June 6, 1999**. However, **no effort** was made by any of these individual Defendants nor anyone else even though Mr. Fox's concerns were well known to them to respond to Mr. Fox's concerns for his client's confidences and his due process rights to defend against the charge against his license were knowingly trampled and disregarded by these individual Defendants.

58.) When Mr. Fox was allowed to defend

his license for the first time on **February 29, 2000** before the same Grievance Committee, which had ordered his license temporarily suspended in 1998, they found the Serbin's complaint **frivolous**.

59.) That Defendant, SIEGEL, should have disqualified himself, where he was well aware of the personal conflict with Mr. Fox and where SIEGEL had received ex parte information, opinion and commentary from the Defendants, SANKEL and EVANS at the direction, tacit or express consent and knowledge of SANKEL, BOGGS and THE FLORIDA BAR.

59a.) That the individual Defendants knew or should have known that their acts and misconduct herein were illicit and unconstitutional. . . .

61.) In the present cause as direct and proximate result of the denial of his constitutional and civil rights, Mr. Fox has been unable to obtain employment in the legal profession nor comparable employment commensurate with his experience and abilities since February of 1998 because of said illicit proceedings conducted by the individual Defendants for the FLORIDA BAR.

62.) That as a direct and proximate result of the denial of his constitutional and civil rights by the DEFENDANTS, Mr. Fox has suffered severe and permanent pain, mental anguish, loss of

ability to earn income now and in the future and from the stress of this circumstance and the loss of his livelihood has suffered severe decline in health and aggravation of pre-existing and severe debilitating medical conditions, for which there is no insurance now available and his life span and ability to enjoy life and his family has been severely damaged.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Plaintiff, CALVIN DAVID FOX, prays that this Court will enjoin the DEFENDANTS to refrain from and to dissolve the present cause against him and order that the Plaintiff be reinstated to the Florida Bar and that this Court will further award damages in excess of five million dollars ($5,000,000), together with interest, attorney fees, costs and such other relief as this Court deems just and appropriate.

V.
COMMON ALLEGATIONS AS TO DEFENDANTS, STATE, FLORIDA SUPREME COURT AND FLORIDA BAR

63.) That paragraphs nos. 1 to 50 are re-alleged herein verbatim.

64.) That this is a complaint for prospective relief against the State of Florida; the Florida Supreme Court; and the Florida Bar and

Defendants, BOGGS; EVANS; FRESHMAN; KARR and SANKEL in their official capacity.

65.) That the acts and misconduct and denial of federal and state constitutional rights alleged herein are institutionalized and the result of tacit approval and policy generated and inherent to the operations and procedures in all Attorney Disciplinary matters of and by the Defendants, STATE; THE FLORIDA SUPREME COURT and THE FLORIDA BAR.

66.) That Mr. Fox is representative of respondent Attorneys, who have suffered and continue to suffer the same denial of due process here and who have experienced and continue to experience the same denial of equal protection herein, which rights are otherwise afforded to all other citizens and ax murderers.

67.) That if the Florida Bar is an "Arm of the Florida Supreme Court" and the Florida Supreme Court has tacitly or neglectfully allowed the Florida Bar to operate with tacit approval and unchecked and unreviewed herein, the BOGGS; EVANS; FRESHMAN; KARR; SANKEL and SIEGEL as the ARM of the FLORIDA SUPREME COURT are engaging in unlawful acts, including ex parte contact with the trier of fact; disregard for the attorney/client privilege; reckless unethical contact with clients, who are represented by counsel; and disregard for fundamental due process rights.

68.) The Defendant, STATE's agencies, the FLORIDA BAR and the FLORIDA SUPREME COURT, have sought to create the false illusion that complaints by the FLORIDA BAR are fairly, impartially and with all due consideration to due process and equal protection considered by the FLORIDA SUPREME COURT and THE FLORIDA BAR.

69.) That there is no lawful separation between the FLORIDA BAR in that EVANS, without any supervision or control and/or with the tacit approval of BOGGS and SANKEL engaged in conduct for which any other attorney would be severely sanctioned and punished.

69a.) That instead of responding and reviewing the allegations herein, the FLORIDA SUPREME COURT rubber stamps Grievance Orders and Referee Recommendations without regard to serious and chronic violations of the federal and state constitutions and codes of ethics and deny of fundamental due process by the FLORIDA BAR and its employees, agents and assigns.

70.) In addition, the order temporarily suspending Mr. FOX, with its language denying Mr. Fox equal protection and benefit of the Rules of Appellate Procedure, is a "**standard order**" in all Attorney matters and was **authored and written** by the FLORIDA BAR for the FLORIDA SUPREME COURT.

71.) That Mr. Fox and all attorneys did knowingly not check their constitutional rights at the door, when they became attorneys.

72.) That Mr. Fox and all attorneys are voters, citizens and are entitled to due process and equal protection, just like any ax murderer before any ax murderer is convicted and the appeal decided.

73.) That Mr. Fox has exhausted all administrative remedies and has made every effort possible to resolve this circumstance prior to filing this complaint.

74.) That the illusion of fairness, due pocess and objective consideration of claims filed by the Florida Bar in the Florida Supreme Court is false.

75.) That it affirmatively appears that there will be irreparable injury, and loss of constitutional rights and damage has resulted and will result for which there is no adequate monetary compensation.

76.) That the facts and circumstances herein are based upon facts and circumstances, which are based upon admissible evidence.

77.) That there is no other remedy at law for the denial of constitutional rights herein and the DEFENDANTS will not and have not done anything to remedy this circumstance.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the

PLAINTIFF prays that this Court will impose prospective injunctive relief against the misconduct and illicit acts alleged herein and that this Court will impose attorney's fees and costs for the prosecution of this complaint.

VI.
COMPLAINT AGAINST THE STATE

78.)That paragraphs 1 to 62 and 75, 76 and 77 are re-alleged herein verbatim.

79.) That the STATE is liable under the doctrine of respondeat superior for the acts and misconduct of its employees and agencies herein.

80.) That the STATE and its administrative agencies and employees are jointly and severally liable herein and have waived immunity under Section 728.68 Florida Statutes.

81.) That under the Florida Constitution as explained in **Department of Revenue v. Kuhnlein**, 646 So.2d 717, at 721 (Fla. 1994) the STATE and its administrative agencies and employees are liable for the denial of federal and state constitutional rights and there is no sovereign for the violation of these rights.

WHEREFORE, upon the foregoing and such other terms as this Court deems just, the Plaintiff, CALVIN DAVID FOX, prays that this Court will enjoin the proceedings by the Defendants and quash the unlawful conduct of the Defendants and award damages herein in excess

of five million dollars ($5,000,000), together with attorney's fees and costs and such other relief as this Court deems just and appropriate.

CALVIN DAVID FOX
P.O. Box 7900
Jupiter, Florida 33458
(954) 383-5943

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing FIRST AMENDED VERIFIED COMPLAINT was caused to be served by first class mail prepaid on the 16th day of August, 2004 upon Deborah L. Neveils, Assistant Attorney General, 1515 North Flagler Drive, Suite 900, West Palm Beach, Florida 33401 and Barry Richard, 101 East College Avenue, Tallahassee, Florida 32301.

CALVIN DAVID FOX

STATE OF FLORIDA :
:SS:
COUNTY OF PALM BEACH:

CAME AND APPEARED, before me, the undersigned authority, Calvin David Fox, who first identifying himself with Florida License No.

F200-104-47-177-0 and being sworn deposes and says that the foregoing First Amended Verified Complaint is true and correct.

SWORN and SUBSCRIBED TO, on this 14th day of August 2004 at Jupiter, Palm Beach County, Florida. . . .

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60231-CIV-COHN/SNOW

CALVIN DAVID FOX,
Plaintiff,

v.

THE STATE OF FLORIDA, et.al.,
Defendant.
_____/

FINAL ORDER OF DISMISSAL

THIS CAUSE is before the Court upon Motions to Dismiss by Defendant State of Florida and Defendant John F. Harkness[0] (docket entries ## 6 & 23). Plaintiff filed a Verified Response in Opposition to Defendant State of Florida's

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[1]Although John F. Harkness has filed a Motion to Dismiss listing himself as a Defendant, Plaintiff's Complaint fails to identify him as such.

Motion to Dismiss (docket entry #16).[0]

Plaintiff alleges violation of his Constitutional rights to Due Process and Equal Protection arising from disciplinary proceedings pursued by the Florida Bar. These proceedings resulted in a temporary suspension order of Plaintiff's license to practice law by the Florida Supreme Court. Defendants contend that this Court should abstain in accordance with the Rooker-Feldman doctrine. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983).

In Rooker, the Supreme Court held that a federal district court may not review the final decisions of a state court of competent jurisdiction. Such review rests solely in the United States supreme Court. Feldman, 460 U.S. at 482. The claims raised in district court need not have been argued in the state judicial proceeding in order to be barred. Id., at 483. n. 16. A district court engages in impermissible appellate review when it hears claims that are

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[2]Plaintiff has yet not filed a response to Defendant Harkness' motion. However, as the application of Rooker-Feldman is applicable to the entire case, the Court will address both motions simultaneously.

inextricably intertwined with the state court decision. Id.

Disciplinary proceedings by state bar associations are the types of actions which have resulted in abstention by district courts under the Rooker-Feldman doctrine. See Leaf v. Supreme Court of Wisconsin, 979 F.2d 589 (7th Cir. 1992) and Tindall v. The Florida Bar, 1997 WL 689636 (M.D. Fla. 1997). The present action fits squarely in this precedent. Plaintiff's claims are inextricably intertwined with the Florida supreme Court's decision and, therefore, would necessitate review of that decision. Accordingly, the Rooker-Feldman doctrine applies.

Accordingly, upon consideration of the motions, the response and the record, is it

ORDERED AND ADJUDGED that the Motions to Dismiss (docket entries ## 6 & 23) are hereby **GRANTED.** This case is hereby **DISMISSED** for lack of subject matter jurisdiction. The Clerk of Court is directed to close this case. All pending motions are denied as moot.

DONE AND ORDERED in chambers at Fort Lauderdale, Broward County, Florida, this 16th day of August, 2004.

JAMES I. COHN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60231-CIV-COHN/SNOW

CALVIN DAVID FOX, **[EXCERPT]**
Plaintiff,

v.

THE STATE OF FLORIDA, et.al.,
Defendant.
_____/

MOTION FOR REHEARING;
MOTION TO AMEND JUDGMENT;
MOTION TO PROCEED UPON AMENDED COMPLAINT;
DEMAND FOR A DEFAULT JUDGMENT

COMES NOW, the Plaintiff CALVIN DAVID FOX, pursuant to Rules 15, 52b, 59 and 60 Federal Rules of Civil Procedure and submits this Motion for Rehearing, Motion to Amend Judgment, Motion to Proceed upon First Amended Complaint and Demand for Default Judgment and as grounds therefore shows:

1.) That this is a **timely** motion directed to this Court's "Final Order of Dismissal," which was filed on order about **August 16, 2004**

dismissing the Petitioner's **verified** ***pro se*** complaint.

2.) That this Court has overlooked and misapprehended that under Rule 15(a) Federal Rules of Civil Procedure, the Plaintiff has a right to amend his complaint once as a matter of right, where no responsive pleading has been filed.

3.) That in the present cause, the Defendant, THE STATE OF FLORIDA has filed a motion to dismiss, which is not a responsive pleading. **E.g., Vanderberg v. Lewis**, 798 So.2d 806 (Fla. 4th DCA 2001).

4.) That the only other Defendant, which has been served herein, THE FLORIDA BAR, has failed to file any response to the Verified Complaint.

5.) That this Court has overlooked and misapprehended that prior to this Court's dismissal order herein and in a timely fashion on **August 13, 2004**, the Plaintiff submitted his First Amended Verified Complaint herein.

6.) that this Court has overlooked and misapprehended that the Plaintiff in his Verified Response to the State's Motion to Dismiss specifically preserved his right to amend the complaint.

7.) That in said First Amended Verified Complaint the Plaintiff has brought claims against Defendants named therein individually and in their official capacity and against the State and its

agencies under Section 1983 and upon Section 768.28 Florida Statutes, upon which this Court has pendent jurisdiction.

8.) That this Court has misapprehended or overlooked that the Rooker-Feldman doctrine does not apply to administrative actions as in the case at bar, **Verizon Maryland, Inc. v. Public Service of Maryland**, 535 U.S. 635, at 643, n3 . . . (2002), nor does it prohibit prospective relief against a judicial officer, **Supreme Court of Virginia v. Consumer's Union**, 446 U.S. 719, at 735-736 . . . (1980); **Pulliam v. Allen**, 466 U.S. 522, at 541-542 . . . (1984).

9.) That this Court has overlooked and misapprehended that the Rooker-Feldman doctrine only applies to **final** decisions by a State's highest court, **District of Columbia Court of Appeals v. Feldman**, 460 U.S. 462, at 486, . . . (1982) and upon those claims which there has been a **full** hearing and **reasonable** opportunity to litigate, **Rooker v. Fidelity Trust**, 263 U.S. 413, at 415 . . . (1923), of which neither condition under **Rooker-Feldman** is present in the case at bar.

10.) That this Court should amend its judgment to direct that this matter proceed upon the First Amended Verified Complaint; or grant rehearing herein to order this matter to proceed upon said First Amended Verified Complaint.

11.) That in the alternative, this Court

should grant a default judgment against the Florida bar, which was served with the Verified Complaint on **July 15, 2004** and has deliberately refused, neglected and failed to respond to the complaint.

12.) That this Court has overlooked that the Plaintiff has requested that Harkness', who is not named or suggested as a Defendant anywhere in any complaint, Response to the Complaint be stricken as **frivolous**. **See, Response in Opposition to Harkness Motion to Dismiss**, appended hereto.

14.) That this Court's reliance upon **Tindall v. The Florida Bar** in the face of the foregoing more current and superior authority is greatly misplaced. **Tindall v. The Florida Bar** is outdated; it is an **unpublished** opinion, which has no precedential value; and it was apparently issued by a Court, which would not be binding upon this Court.

15.) That additionally this Court has overlooked that **Leaf v. Wisconsin**, is erroneous and inapplicable to the extent that it is inconsistent with the foregoing authority.

WHEREFORE, upon the foregoing, the Plaintiff, CALVIN DAVID FOX, prays that the Court will grant rehearing and/or amend its judgment and grant this motion and order that this cause proceed upon the First Amended Verified Complaint and/or that this Court will enter its

order granting a default judgment herein upon the Verified Complaint against the Florida Bar for its deliberate refusal, neglect and failure to respond to said complaint before this Court's order of dismissal.

CALVIN DAVID FOX

. . .

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60231-CIV-COHN/SNOW

CALVIN DAVID FOX,
Plaintiff,

v.

THE STATE OF FLORIDA, et.al.,
Defendant.
_____/

ORDER DENYING MOTION FOR REHEARING

THIS CAUSE is before the Court upon Plaintiff's Motion for Rehearing; Motion to Amend Judgment; Motion to Proceed upon Amended Complaint; Demand for a Default Judgment [DE 32]. The Court has carefully considered the motion and is otherwise fully advised in the premises.

Plaintiff Calvin David Fox ("Plaintiff" or "Fox") filed this action alleging violation of his Constitutional rights to due process and equal protection arising from disciplinary proceedings pursued by the Florida bar. These proceedings resulted in a temporary suspension order of

Plaintiff's license to practice law by the Florida Supreme Court. Plaintiff seeks compensatory damages as a result of this allegedly erroneous order.

Defendants sought to dismiss this case in accordance to the Rooker-Feldman doctrine. See Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983). In Rooker, the Supreme Court held that a federal district court may not review the final decisions of a state court of competent jurisdiction. Such review rests solely in the United states supreme Court. Feldman, 460 U.S. at 482. This Court granted the motions to dismiss on this basis, noting that disciplinary proceedings by state bar associations are the types of actions which have resulted in dismissals by district courts under the Rooker-Feldman doctrine. See Final Order of Dismissal [DE 28].

Plaintiff seeks rehearing of the dismissal of this action by this Court. First, Plaintiff asserts that he filed an amended complaint prior to the Court's entry of the Final Order of Dismissal. Because it was "night-box filed," Plaintiff's First Amended Verified Complaint was not received in chambers until after entry of the dismissal order.[0]

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[0] [1]Due to security concerns, there is no longer an after-hours "night-box" available for

In the amended complaint, Plaintiff has added Section 1983 claims against six (6) individuals who participated in some fashion in the Florida bar grievance proceeding [DE 27]. However, the substance of Plaintiff's claims remain inextricably intertwined with the Florida supreme Court's decision to suspend Plaintiff.

Rule 15(a) of the Federal Rules of Civil Procedures provides that a party may amend the party's pleading "by leave of court or by written consent of the adverse party" and that "leave shall be freely given when justice so requires." In construing Rule 15(a), the Supreme Court has held that:

> In the absence of any apparent or declared reason–such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of the allowance of the amendment, futility of amendment, etc.–the leave sought should, as the rules require, be

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filing. Instead, papers filed prior to 10:00 a.m. may be stamped "Night-box" filed for the previous day if so requested by the filer.

"freely given."

Foman v. Davis, 371 U.S. 178, 182 (1962). In this case, the attempted amendment is futile, since Plaintiff's amended complaint does not cure the lack of subject matter jurisdiction.

With respect to Plaintiff's argument in the present motion that the Rooker-Feldman doctrine does not apply to administrative actions, such argument does not apply to this case. Here, even if the Florida bar could be considered an "administrative agency" for purposes of enforcing the Rules Regulating the Florida bar, because the Florida Supreme Court makes the final decisions on disciplinary matters, the Rooker-Feldman doctrine does apply. The Court notes that Plaintiff's Complaint states that the United States Supreme Court denied certiorari review of the Florida Supreme Court decision in this case. See ¶22 of Complaint [DE 1] and ¶ 37 of First Amended Complaint [DE 27]. Resolution of Plaintiff's federal Section 1983 claims in this case would necessitate review of the Florida Supreme Court's suspension order.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Rehearing [DE 32-1] is hereby **DENIED**;
2. Plaintiff's Motion to Amend Judgment [DE 32-2] is hereby **DENIED**;
3. Plaintiff's Motion to Proceed upon

Amended Complaint and Demand for a Default Judgment [DE 32-3] is hereby **DENIED.**

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 14th day of October, 2004.

JAMES I. COHN
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 04-60231-CIV-COHN
Magistrate: SNOW

CALVIN DAVID FOX,
Plaintiff,

v.

THE STATE OF FLORIDA, et.al.,
Defendant.
_____/

NOTICE OF APPEAL

COMES NOW, the Plaintiff, CALVIN DAVID FOX, and hereby takes and enters an appeal to the U.S. Eleventh Circuit Court of Appeal from this Court's Order entitled, "Final Order of Dismissal," which was signed and filed on August 16, 2004 and was rendered by the order denying rehearing signed on October 14, 2004. The nature of the order appealed from is a Final Order of Dismissal, which also denies Motion to Amend Complaint; Motion to Proceed Upon Amended Complaint; and Demand for Default.

RESPECTFULLY SUBMITTED, on this 8th day of November 2004.

CALVIN DAVID FOX

. . .

CALVIN DAVID FOX
Mailing Address: 217 Marlberry Circle, Jupiter, FL 33458 . . .

I. PREVIOUS EXPERIENCE:

June 2000 to date:
Fox Solutions;
Neighbors for Abacoa, Inc. D/b/a
Neighbors for new Haven, etc.

April 1999 to February 2000:
FINANCIAL ADVISOR
Prudential Securities, Inc.

May 1994 to March 1999:
GENERAL COUNSEL
Tutor Time learning System, Inc.

November 1989 to September 1992:
MANAGING PARTNER
Tauler & Fox, P.A.

December 1987 to November 1989:
MANAGING PARTNER
Vernis & Bowling, P.A.

April 1978 to June 1987:
ASSISTANT ATTORNEY GENERAL

March 1976 to April 1978:

ASSISTANT COUNTY ATTORNEY

II. **EDUCATION:**

Tulane University School of Law, J.D., with honors, 1974
Chairman, Honor Board
Moot Court Competition

Tulane University, B.A., 1970
NCAA Football scholarship;
National President, Arnold Air Society;
General Dynamics Outstanding Cadet

III. **CONTINUING EDUCATION:**
Wood Badge BSA; Certified Medication Training; Certified Arbitrator Training; Certified Dale Carnegie Instructor, Public Speaking and Communication; Medical institute for Attorneys; Trial and Appellate Advocacy; Florida Insurance Exam.

IV. **MILITARY:**
First Lieutenant, United States Air Force Judge Advocate and USAF reserve officer, 1975 to 1980.

V. **PUBLICATIONS AND WRITINGS:**
"CAPITAL LITIGATION," 57 Fla. Bar Journal

253;
United States Supreme Court Briefs, Writs and Responses 35
U.S. 5th; 9th; and 11th Circuit Briefs, Writs and Responses 42
Florida Supreme Court Briefs, writs and Responses 137
Florida 1st; 2nd; 3rd; and 4th District Briefs, Writs and Responses 614

VI. COMMUNITY SERVICE:

United Way Mental Health Funding Panels; Juvenile Diabetes Foundation; Certified Scoutmaster; BSA Wood Badge; Instructor Drug Enforcement Administration; Coach, Dania Beach Optimists Youth Athletic Leagues; Dania Beach Main Street Volunteer Projects; Chairman, School Advisory Forum for Broward County School Board; Neighbors for New Haven.

VII. PERSONAL INTERESTS:

Scoutmaster; coaching baseball and soccer; biking and camping in Florida and the mountains of North Carolina with my little guys, Ernest Dejud Fox, 13; Robert Calvin Fox, 10; and Gabriel Michael Fox, age 9.

REPORTED CASE SUMMARY

CALVIN DAVID FOX

I. **BRIEFS AND RESPONSES**

United States Supreme Court.....35
U.S. 5th; 9th and 11th Circuit Courts.....42
Florida Supreme Court.....137
Florida 1st; 2nd; 3rd; and
4th District Courts.....614

II. **SELECTED CASES: UNITED STATES SUPREME COURT**

1.) **RIDER v. FLORIDA,**
___U.S.___, 105 S.Ct. 1830, 85 L.Ed.2d 132 (1985).
Dismissed on the merits upholding state court

The trial court had dismissed charges brought against a husband for raping his wife, where they were living under the same roof, because in the Legislative history the Florida Legislature had shouted down an amendment to the sexual battery statute to abolish the common law exception to spousal rape. The district court of appeal reversed following the better reasoning in my brief that such a bar to prosecution in

unconscionable and unacceptable in this society. In 1986 Congress amended Title 18 U.S. Code to abolish the common law bar to prosecutions for spousal rape.

2.) **STRICKLAND v. WASHINGTON** 466 U.S. 668 (1985).
A **landmark** decision, in which the Court granted my petition and reversed the Eleventh Circuit of Appeals by a vote of 8 to 1. I had previously lost in the Eleventh Circuit, en banc, which had voted 10 to 3 to reverse the U.S. District Judge C. Clyde Atkins, where I had won the case. Following the reasoning, which I had successfully argued before the Florida Supreme Court in Knight v. State (item 9 in this summary) the U.S. Supreme Court established for the first time the standard by which claims for ineffective assistance of counsel should be reviewed. The case is taught in law schools.

3.) **CHANDLER v. FLORIDA,** 449 U.S. 560 (1981).
Landmark decision declaring that

cameras and electronic media in the courtroom are not unconstitutional per se. The Court quoted my brief and tracked my legal analysis. I coordinated extensive amicus briefs filed on behalf of forty-two (42) states; the National Conferences of Chief Justices; and the electronic media. The case is taught in law schools.

4.) **FLORIDA v. ROYER,**
460 U.S. 491 (1983).
The Court granted my petition and reversed the Florida Third District Court of Appeal en banc decision on the only issues of national concern in the case. First, eight (8) Justices agreed that a law enforcement officer may approach a citizen in a public place and engage that citizen in conversation without the necessity that there be "reasonable suspicion." Secondly, eight (8) Justices also agreed that the so-called "drug courier" profile did amount to "reasonable suspicion" to detain a suspect. The case is taught in law schools.

6.) **FLORIDA v. RODRIGUEZ,**
463 U.S. 940 (1983).
After review for a period of two years, the Court granted my motion for rehearing of its initial denial of my Petition for Certiorari (which is virtually unheard of in the U.S. Supreme Court). The Court then granted my petition and reversed upon the standard of review under the Fourth Amendment for "articulable suspicion" for detention and arrest in the nation's airports.

7.) **FLORIDA v. RODRIGUEZ,**
469 U.S. (1984).
The Court again granted my petition and for the second time, reversed upon the facts and circumstances in the above case. Justice Marshall dissenting did not disagree with the result, but rather objected to my tenacity in getting review in the U.S. Supreme Court.

CALVIN DAVID FOX
217 Marlberry Circle
Jupiter, Florida 33458
(561) 776-9955

April 15, 2004

Chairman, Henry M. Coxe, III
101 Adams Street
Jacksonville, Florida 32202-3303

RE: **Commission on Lawyer Regulation**

Dear Chairman Coxe:

I did not receive a "survey" from the above referenced Commission, but my story should be a relevant if not compelling reason to reform the Florida Bar Lawyer Regulation practices and to create separation between Florida Bar Lawyer Regulation and the Florida Supreme Court.

On **July 20, 1998** I informed Tony Boggs of the Florida bar of the circumstances herein with a copy of a letter written to Bar Counsel, Gregg Wenzel. I got **no** response from Mr. Boggs.

On **January 16, 2001** I again wrote of these circumstances to President-elect, Todd Aronovitz. On or about **June 5, 2001** Mr. Aronovitz met on my behalf with Tony Boggs in

Boggs' Tallahassee office and requested that these circumstances be looked into. Mr. Boggs said he would do so, but has **never** responded.

On **December 4, 2001**, I wrote Mr. Boggs again of these circumstances in detail and forwarded a copy to Todd. In early 2002, Mr. Boggs wrote saying he would look into it, but has **never** responded.

On **June 5, 2003** in the **attached** letter I petitioned Mr. Aronovitz and the Board of Governors to review this matter. Mr. Chaykin of the present Commission was on the Board and received this document and supporting exhibits, which contain the entire Florida Bar file. On **June 11, 2003** Mr. Aronovitz under some false impression that this matter was still pending in the U.S. Supreme Court, sent the matter back to Tony Boggs for a response. **See Fox letter of June 25, 2003, attached**. Mr. Boggs has **never** responded. This is ridiculous. I cannot sit by and do nothing any longer.

STATEMENT OF THE CASE

Notwithstanding a finding of no probable cause upon the underlying complaint on **February 29, 2000** by the **same** Grievance Committee, which had previously recommended suspending my law license **temporarily**, my license remains suspended. I would respectfully urge you to take a few minutes to read this letter.

This is a case of power run amok.

Enclosed herewith is a copy of my resume and the petition and appendix to **Calvin David Fox v. Florida**, U.S. Case No. 99-1887 (cert. Den. October 2, 2000), which contains the record before the Florida Bar. Also enclosed is a copy of the Index to the Appendix, listing all documents therein. I would particularly point out, a.) my contract with Serbin and closing statement at pp. 182-188; b.) the March 14, 2000 report of no probable cause at pp. 190; and c.) my initial response to the Bar and several **unheard** motions for protective orders at pp. 12-13; 19-23; and 26-32. Also please review my motion to **disqualify** the referee, Siegel, against whom I had filed a petition to block his appointment as a judge, appended hereto.

Also enclosed is an article, "***Due Process in Lawyer Disciplinary Cases: From the Cradle to the Grave***" 42 South Carolina Law Review 925. In the first few pages, the author relates the fact that in certain states, lawyers do not have constitutional rights as other citizens. In the article the author also concludes that the U.S. Supreme Court has not yet reviewed or approved this issue. I submit that the Florida Bar, without interference by the Florida Supreme Court, has also imposed a policy of lawyers-do-not-have-due-process-rights, herein. I, for one, did not check my rights at the door, when I became a

lawyer in 1975.

In May of 2002, at my request, Andy Berman (305) 945-1851, an attorney with a prominent firm, inquired of Arlene Sankel of the Miami office of the Florida Bar with respect to removing the present temporary suspension. Mr. Berman related that the conversation with Sankel was so vitriolic that it was **not worth relating,** because in Mr. Berman's words, "**she hates you.**" Of course the Supreme Court has said that the purpose of lawyer regulation is **not** supposed to be Ms. Sankel's vendetta, but rather to protect the interests of the public. In this matter the intent, **if any**, to protect the public is well over and is not served by continuing the present temporary suspension and obvious **vendetta.**

In 1975 I started the practice full of complete faith and belief that **truth** and **justice** would **always** prevail. However, in *In Search of Atticus Finch* (d Ed. 1997) at page 131 the author laments that the profession has been greatly diminished by self-interest and the loss of the most noble standards of our profession, which the author describes as:

> "[t]he lack of a pervasive sense of mission by individual lawyers the absence of a sense of rightness and righteousness that transcends self-interest and commercialism, the loss of a sense of calling, an idealism as

in a vocation, that gives all of our labors its dignity."

At all times for me, it has been that "**lack of self-interest**," "**sense of rightness**" and "**sense of calling**," which I have followed to guide my efforts for my clients. This is particularly true in the present circumstance, where protecting my client's attorney/client privilege in the face of a headlong assault by the Florida Bar, which was **unchecked** by the Florida Supreme Court, has resulted in the unfair and illicit suspension of my license and **terrible consequences** for me and my family.

THE SERBIN LITIGATION

in **November of 1992**, as reflected in our contractual agreement, Linda Serbin, with whom I had been having an affair, came to me in tears complaining to me, a.) that her estranged husband, who was an alcoholic, had been raping and beating her daughter since she was nine (9) years old with both families' knowledge; b.) that she wanted a divorce from Jon Serbin and to save her daughter, who had tried suicide several times; c.) that the bank was about to obtain a final judgment of foreclosure on her $750,000 waterfront house of 21 years for the price of the $300,000 mortgage and she was without legal representation; d.) that she and her husband had both lied under oath to the creditors' lawyers and

to the Court in U.S. bankruptcy proceedings against her husband's business; and e.) that her daughter's personal injury case arising from a fall from a horse at an equestrian center was being grossly mishandled by local counsel.

In the letter dated **November 23, 1992** I recited the foregoing and agreed to represent Linda Serbin in the house foreclosure and related matters for the flat sum of $25,000. I took her daughter's case to competent counsel, who filed and successfully prosecuted the case; and continued to represent Linda Serbin in several matters up to and including **June 5, 1998**. As noted in my letter I also was compelled to cease further intimate relations with Linda Serbin.

Thereafter, I was able for seven (7) months to block vigorous successive attempts to sell her house on the Courthouse steps. On **June 15, 1993**, Linda and I obtained a bona fide buyer for **$465,000** and closed the sale. Just prior to that in **May of 1993** I had also forced the release of **$25,000** from the escrow fund of an unrelated defaulting buyer, who was apparently trying to force the sale on the Courthouse steps.

On **August 4, 1993**, I gave Linda Serbin the closing statement (p. 188) on the Serbin foreclosure litigation, in which I recited that the $25,000 escrow funds seized from the unrelated defaulting buyer was accepted as my fee. However, I also recited that on June 15, 1993 to

assist her in moving I had given $5,000 of my fee back to Linda Serbin. However, my November 23rd fee agreement was nevertheless satisfied.

Thereafter, without any further fees, I continued to represent Linda Serbin as the plaintiff in the escrow deposit litigation against an unrelated defaulting buyer. Finally on **June 5, 1998**, I obtained an award of the balance of the realtor's escrow deposit of **$27,000**. Thus Linda Serbin had recovered a total of **$517,000** ($465,000 + 25,000 + $27,000), from the sale of her house on the back of the undersigned and she received almost six (6) years of legal fees (November 1992 to June 1998) for the total sum of $25,000. **See** Letter to Wenzel copy to Boggs, pp. 80-93 U.S. petition.

JON SERBIN'S COMPLAINT

on **September 10, 1996**, more than three (3) years after the house foreclosure closing statement to Linda Serbin, I received the complaint of Jon Serbin. Jon Serbin told Elena Evans of the Florida bar that I had kept about $18,000 in my trust account since the sale of the Serbin house in June 1993 without authorization. Jon Serbin had never been my client. Jon Serbin's theory was apparently that I represented Linda Serbin since 1993 for free.

I received a letter from Elena Evans asking me to respond to Jon Serbin's complaint, '**to see**

if this matter should even be referred to a grievance committee.' As reflected in my letters and Motions for a Protective Order, I repeatedly replied that Linda Serbin was my only client and I would be happy to respond if she waived her attorney/client privilege, which she repeatedly told me that she did not and she did not wish to make any complaint against me. If I had produced the enclosed written agreement to defend against the Jon Serbin complaint to show Jon Serbin's complaint was **frivolous**, I would have become a witness against Linda Serbin in her own divorce and a witness against her in state and federal criminal proceedings. Ms. Evans did not give a damn about any of this, nor my selfless attempt to protect Linda Serbin's attorney/client privilege.

1998 EX PARTE HEARING

As noted about, throughout the proceedings being handled by Elena Evans and the Florida Bar from September 1996 to February 29, 2000, I reiterated, a.) that I would be glad to cooperate and offer to produce all documents *in camera*, but b.) that Linda Serbin had never made any complaint and did not wish to; c.) that Jon Serbin was not my client; and d.) that in order to defend against the complaint of Jon Serbin to show it was frivolous I would have to disclose the extreme confidences of Linda Serbin, exposing

her to ridicule and scorn in the community and prosecution in federal and state criminal proceedings, and making me a witness against my own client.

Ms. Evans never replied to my response that Linda Serbin was my only client or my concern for my client's attorney/client privilege. However, after the 11th Circuit Grievance Committee in Miami got my response and did not proceed, Ms. Evans transferred the case to the 17th Circuit.

In **April 1997**. The 17th Circuit Grievance Committee issued a **punitive** subpoena for all client records since the beginning of time. However, after the 17th Circuit Grievance Committee received the same response as I had given Ms. Evans as noted above, it **declined** to proceed and **closed** its file. The case was then transferred back to Ms. Evans in the 11th Circuit.

In **September 1997**, Ms. Evans reissued the same **punitive** subpoena as the 17th Circuit committee had issued asking for all client records since the beginning of time. I again responded as noted above. A hearing was set by Evans for **January 20, 1998** at 5:30 o'clock p.m. upon "***the Complaint of Jon Serbin***." No other matter was noticed for hearing. I was required by the Notice to appear and defend. However, I had a previously scheduled federal arbitration trial in Seattle, Washington on **January 20, 1998** at 9:00

o'clock a.m. I promptly cited to the standing "***Federal State Administrative Conflict Order***" [which has been subsequently codified as a Florida Administrative Rule], and made two written requests by letter and motion respectively asking for a delay of three (3) weeks to appear and defend against the taking of my license.

Ms. Evans and former Grievance Committee Chairman Lawrence Freshman, did not give a damn about the ***Federal State Administrative Conflict Order*** nor my inability to appear and defend against the taking of my license. In the hearing transcript on January 20th [pp. 43-63], it was **undisputed** that I was in a federal arbitration trial in Seattle, Washington. However, the Committee proceeded with Evans and only three (3) of eleven (11) members present. Furthermore, without notice to me and despite her repeated previous assurances to me, Linda Serbin appeared unsworn on the telephone. The Grievance Committee without my appearance issued a recommendation that my license be **temporarily** suspended.

Mark Linowitz, (305) 858-9613, related to me in 1992 that the Miami office of the Florida Bar had **begged** him to file a complaint against me telling Linowitz that they had listed me on a chalk board of **targeted** attorneys after my testimony against the State, which resulted in a stay of the death penalty in the underlying case,

Stewart v. State, 420 So.2d 862 (Fla. 1982) [**see, "Convictions and Conscience Remain on Trial"** Sun Sentinel July 16, 1990 (Fox testifies that Stewart should not be executed because he did not do the crime – after representing the state against Stewart) appended hereto]. I was warned outside the hearing, just before I testified by Penny Hershoff, Assistant State Attorney [a former Assistant Attorney General], that I, "**would be sorry**" if I testified against the State in order to save Stewart's life. Stewart with a borderline IQ of 70 had "confessed" after two days of interrogation at his rural South Carolina home on a one-page statement typed by the detectives. The trial judge, Michael Salmon, rejected all other grounds, but granted a stay based **solely** upon my testimony.

What is wholly apparent here is that there was **gross** delay by Elena Evans and the Florida Bar upon the Jon Serbin complaint between September 1996 and the January 20, 1998 hearing, where a suspension was recommended. They had no lawful basis to proceed on Jon Serbin's complaint. To understand why, you should only consider my uniform response that Jon Serbin was **not** my client and the Linda Serbin had uniformly **refused** to make any complaint and repeatedly stated that she did **not** want to make any complaint and I would not violate her attorney client confidences, in order to

show there was a contract and closing statement.

Thereafter, in a reckless and unchecked manner **without my knowledge or permission** for almost two (2) years, **ex parte** the Florida Bar without explaining her rights, constantly harassed and badgered Linda Serbin, to make a complaint against me, which she consistently **refused** to do. Finally, after almost two years of being harassed and again without my knowledge, Linda reluctantly appeared **unsworn** on the telephone on January 20th, 1998. However, even then, in Florida an unsworn statement on the telephone is **not** competent evidence of anything.

THE APPEAL OF THE 1998 EX PARTE PROCEEDING

The history of the proceeding is detailed in the Petition for Certiorari, which I filed in the United States Supreme Court. I strongly believe that the actions of Ms. Evans in recklessly disregarding my client's attorney/client privilege; harassing my client; and in denying my due process rights was **unlawful**.

However, the Florida Supreme Court is buried with fully one third of its case load involved in attorney discipline matters. Moreover, the referee, Paul Siegel (who as noted in the attached motion to disqualify had run for the same judicial position as me), did not care about my due process rights, nor my client's

attorney/client privilege. Therefore, after only one (1) brief hearing, Referee Siegel rubber stamped the Grievance Committee's order of temporary suspension.

Although the Florida Bar was only proceeding before the Referee upon the complaint of Jon Serbin, because Linda Serbin had finally succumbed and made a written complaint on June 6, 1998, I reached a settlement of this matter with the Florida Bar's new counsel, Wenzel. However the settlement failed because of the interference of Wenzel's supervisor, Arlene Sankel, who later testified she was Elena Evans' pal. **See**, pp. 131-134 (Sankel overrules settlement with Wenzel).

On **November 24, 1999** the Florida Supreme Court issued a form order affirming the rubber stamp by Referee Siegel of the 1998 ex parte Grievance Committee hearing and ordered that my license should be temporarily suspended until I complied with the 11th Circuit punitive subpoena. **See, "Due Process in Lawyer Disciplinary Cases" supra**. However, the Florida Supreme Court's order provides that the Florida Bar may file a Notice of Compliance and in any dispute the Referee shall decide if I have complied.

On **October 2, 2000**, the United States Supreme Court denied certiorari without comment. It is well settled that the Court's denial of a certiorari petition has **no** precedential value

and does not reflect the Court's views of any case. The Court denied review in my case **at this point**, because for purposes of the United States Supreme Court's jurisdiction, the Florida Supreme Court's order is still only an interlocutory temporary suspension **and** as reflected in the next section below, it appeared that the dispute herein would be resolved without federal Court intervention.

2000 GRIEVANCE FINDING OF NO PROBABLE CAUSE

Subsequent to the January 20, 1998 Grievance Committee hearing, Evans left the Florida Bar. On **February 29, 2000**, the Florida Bar through new counsel, Gregg Wenzel, scheduled a hearing **before the same 11th Circuit Grievance Committee** upon the complaint of Jon Serbin as adopted by the complaint of Linda Serbin. At the hearing, Linda appeared **for the first time** and **for the first time** the undersigned was allowed to appear and to defend his license. **For the first time**, the undersigned was allowed to produce the November 23, 1992 agreement with Linda Serbin. It was demonstrated that Jon Serbin's complaint was **fivolous**. All Serbin records were produced to the satisfaction of the Grievance Committee. Therefore, on **March 14, 2000**, the Grievance Committee issued its **unanimous** finding of no probable cause, in a

letter to the Serbins reciting, *inter alia:*

> "You are advised that [the Complaint against Calvin D. Fox] has been investigated and considered by this committee. It is our decision that there is insufficient evidence to support finding probable cause to believe that a violation of professional ethics has occurred which warrants the imposition of discipline because: there is insufficient evidence to support your allegation that [Calvin D. Fox] improperly disbursed funds from his trust account."

CONCLUSION

The pursuit of an action against my law license was supported by reckless and unethical conduct and a gross denial of due process. The Florida Supreme Court could not in good faith have reviewed this matter at arms length and with the scrutiny required of all other cases and of lawyers, who appear before it. The Florida Supreme Court assumes that the Florida Bar an "**arm of the Florida supreme Court**" has done its job and has done it ethically and legally. I do **not** think that they want to hear anything else or that they have just heard **too many** complaints about misconduct by the Florida Bar and do **not**

want to hear any more.

The continued suspension of my license is **manifestly unjust** as demonstrated by the hearing and finding of no probable cause on **February 29, 2000** and serves no legitimate purpose. If not for Elena Evans unlawful and unethical interference with my client and my client's right to her attorney/client privilege **and** utter disregard for my due process rights, this matter would have been concluded in 1996 and closed in the same manner and result as it did at the February 29, 2000 hearing. Mr. Wenzel remarked on at least one occasion that this matter had been completely mishandled by Ms. Evans. But the Florida Bar does **not** investigate its own.

In this case, at the risk of my own livelihood and license, I sought to protect my client against the disclosure of her most closely held confidences. If I had been allowed a modicum of due process and if there was any respect by the Florida Bar for my client or her attorney/client privilege, this matter would have been concluded in 1996 as apparently two previous Grievance Committees decided it should.

My concern for my client's confidences from 1996 to June 6, 1998 were quite legitimate. **First of all**, the Florida Bar in Ethical Opinion 92-5 specifically recommended that Florida attorneys resist administrative subpoenas, as I

have done in this case, in order to protect the confidences of their clients. **Secondly**, in **Doe v. The Supreme Court of Florida**, 734 F. Supp. 981, at 988 (S.D. Fla. 1990), the Florida Bar's confidentiality rule was struck down. Therefore, between 1996 and 1999 Jon Serbin and state and federal prosecutors could have used the enclosed contract with Linda Serbin to proceed against Ms. Serbin. Ms. Serbin **then** would have had a legitimate complaint against me for wrongfully disclosing her confidences. Ms. Serbin did not waive her attorney client confidentialities until **June 6, 1998**. However, **no effort** by Evans nor anyone else at the Florida bar to respond to my concerns for my client's confidences was **ever** made and my due process rights were utterly trampled. When I was allowed to defend for the fist time on **February 29, 2000** the same Grievance Committee found the Serbins' complaint **frivolous**.

Arlene Sankel testified last year that she is, "**an arm of the Florida Supreme Court**." This was news to me. She also testified that if I was concerned about my client's attorney/client privilege, I could file a otion for a protective order (which she apparently did not know or had forgotten were filed, but never considered). If Sankel is **an arm of the Florida Supreme Court**, an "arm of the Florida Supreme Court" **unlawfully** solicited my client to make a

complaint; an "arm of the Florida Supreme Court" **recklessly** trampled the attorney/client privilege; an "arm of the Florida Supreme Court" **trampled** due process; and an "arm of the Florida Supreme Court" **ignored** legitimate motions for protective orders.

I apologize for my bitterness, but my family has suffered terribly. I have been divorced because of this circumstance; and unemployed since February of 2000. As a small remedy, I have asked that the Board direct the Florida Bar to file its statement that there has been substantial compliance with the Committee subpoenas. As Mr. Berman pointed out, there are no more than technical paper violations here even with no records and any suspension for technical violations would be long over.

If you have any questions or need additional information, please contact me. I would be happy to appear and to answer any further questions or inquiry, which the Commission may have.

Very truly yours,

CALVIN DAVID FOX